



**STATE OF MISSISSIPPI
OFFICE OF THE STATE AUDITOR
SHAD WHITE
AUDITOR**

December 5, 2019

Limited Internal Control and Compliance Review Management Report

Marshall Fisher, Commissioner
Mississippi Department of Public Safety
P. O. Box 958
Jackson, Mississippi 39205

Dr. John Dowdy, Executive Director
Mississippi Bureau of Narcotics
6090 I-55 South Frontage Road
Byram, Mississippi 39272

Gentlemen:

Enclosed for your review are the Limited Internal Control and Compliance Review Findings for the Mississippi Bureau of Narcotics for the Fiscal Year 2018. In these findings, the Auditor's Office recommends the Mississippi Bureau of Narcotics:

1. Strengthen Controls to Ensure Compliance with State Laws Over Compensatory Time Buyouts
2. Strengthen Controls to Ensure Compliance with Agency Policies and State Laws over Procurement Cards
3. Strengthen Controls to Ensure Compliance with State Laws and Regulations over Fringe Benefits
4. Strengthen Controls to Ensure Compliance with State Laws over Reimbursement for Travel Expenditures
5. Strengthen Controls to Ensure Compliance with the MAAPP Manual and Regulations over Bank Accounts
6. Strengthen Controls to Ensure Compliance with State Laws over Properly Documenting and Recording Employee Leave
7. Strengthen Controls to Ensure Compliance with Travel Policies and Procedures over Commodities

Any formal response and corrective action plan provided by the agency has been included as an attachment to this report. Your responses have been summarized by the auditor for inclusion in the body of the report. Any information that is considered personally identifiable information has been redacted accordingly in your response.

During future engagements, we may review the findings in this management report to ensure procedures have been initiated to address these findings.

This report is intended solely for the information and use of management, individuals charged with governance, and Members of the Legislature, and is not intended to be and should not be used by anyone

Mississippi Bureau of Narcotics

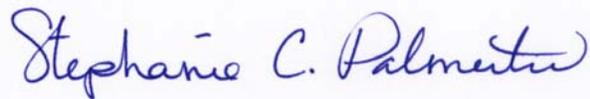
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other than these specified parties. However, this report is a matter of public record and its distribution is not limited.

I hope you find our recommendations enable the Mississippi Bureau of Narcotics to carry out its mission more efficiently. I appreciate the cooperation and courtesy extended by the officials and employees of the Mississippi Bureau of Narcotics throughout the review. If you have any questions or need more information, please contact me.

Sincerely,

A handwritten signature in blue ink that reads "Stephanie C. Palmertree". The signature is written in a cursive style with a large initial 'S'.

STEPHANIE PALMERTREE, CPA, CGMA
Director, Financial and Compliance Audit
Office of the State Auditor
Enclosure

The Office of the State Auditor has completed its limited internal control and compliance review of the Mississippi Bureau of Narcotics for the year ended June 30, 2018.

Our procedures and tests cannot and do not provide absolute assurance that all state legal requirements have been met. In addition, our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control over financial reporting that might be weaknesses. In accordance with *Section 7-7-211, Mississippi Code Annotated (1972)*, the Office of the State Auditor, when deemed necessary, may conduct additional procedures and tests of transactions for this or other fiscal years to ensure compliance with legal requirements.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis.

A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.

In performing our review, we noted certain control deficiencies involving internal controls over financial reporting and instances of noncompliance with state laws that require the attention of management. These matters are noted under the headings **SIGNIFICANT DEFICIENCIES AND INSTANCES OF NONCOMPLIANCE WITH STATE LAW** and **OTHER CONTROL DEFICIENCIES**.

During the review of the Mississippi Bureau of Narcotics (MBN), we noted that the Executive Director purported to be a sworn law enforcement officer. The Director considered his swearing in as Director of MBN to be equivalent to a sworn officer as described in State Law. However, it is the auditor's view that he does meet the legal criteria to be considered a sworn officer. Therefore, he is not entitled to certain benefits as described herein this report.

SIGNIFICANT DEFICIENCIES AND INSTANCES OF NONCOMPLIANCE WITH STATE LAW

Finding 1: Agency Should Strengthen Controls to Ensure Compliance with State Laws Over Compensatory Time Buyouts.

Applicable State Laws and Internal Controls:

Senate Bill 2958 in the 2018 Regular Session (Appropriation Bill for the Department of Public Safety) Section 4 states "Any funds in the Salary, Wages and Fringe Benefits major object of expenditure may be used to purchase accumulated compensatory time within funds available."

Mississippi Bureau of Narcotics' General Order 1-04, Section IV G, states, "Agents may not accrue more than three hundred (300) hours of compensatory time without the express written authority of the Director. **The same shall apply to civilian personnel, except the permissible limit of compensatory time shall be one hundred (100) hours.**"

Prior Attorney General Opinions have contemplated the use of compensatory leave as cash payments. These opinions include, but are not limited to, the following:

- 1) *Attorney General Opinion 1992 WL 613972*, states, “Section 25–3–97(1), supra, and Mississippi SPB regulations impose a duty upon agencies to maintain accurate records of employee leave accumulated and used, and agencies are required to provide reports to employees on a regular basis regarding the “amount of leave which has been accrued and used” (Mississippi SPB Policy Manual, § 7.22.9, July 1, 1989). An analogous review can be drawn from Section 25–3–93(4), supra, in a further analysis of this responsibility of agencies: “Employees are encouraged to use earned personal leave.” It can be concluded that the Legislature has enacted this statutory passage for the purpose of avoiding the lump-sum payment of large sums of unbudgeted funds while ensuring that state employees enjoy the privileges of taking vacations and handling matters of personal business. Therefore, agencies are obligated to adopt and maintain efficient management practices regarding compensatory time.”
- 2) *Attorney General Opinion 1996 WL 50176* that, “In response to your second question concerning a lump sum payment for unused compensatory time, this office has previously held that a state employee has no right to payment for accumulated compensatory time. See the enclosed prior opinions of this office to Charles S. Head dated June 25, 1992, and G. Kenner Ellis, Jr. dated May 28, 1991. Therefore, the employee is not entitled to receive a lump sum payment for any unused compensatory time.”

The Fair Labor Standards Act (FLSA) Section 13(a) (1) requires that certain, non-exempt employees covered by the Act must receive overtime pay for hours worked over 40 in a workweek. Additionally, the Code of Federal Regulations (C.F.R.) Title 29, Section 541.3 provides that police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators...are not exempt under Section 13(a)(1) or the regulations and thus are protected by the minimum wage and overtime provisions of the FLSA.

MS State Code, Annotated 1972 section 45-6-3 (c) states, in part, “Law enforcement officer” means any person appointed or employed full time by the state or any political subdivision thereof, or by the state military department as provided in Section 33-1-33, who is duly sworn and vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime, the apprehension of criminals and the enforcement of the criminal and traffic laws of this state and/or the ordinances of any political subdivision thereof. ... However, the term “law enforcement officer” shall not mean or include any elected official or any person employed as a legal assistant to a district attorney in this state, compliance agents of the State Board of Pharmacy, or any person or elected official who, subject to approval by the board, provides some criminal justice related services for a law enforcement agency.

MS State Code, Annotated 1972 section 45-6-17 (2) states “Any state agency or political subdivision that employs a person as a full- or part-time law enforcement officer who does not meet the requirements of this chapter, or who employs a person whose certificate has been suspended or revoked under provisions of this chapter, is prohibited from paying the salary of such person, or providing any public monies for the equipment or support of the law enforcement activities of such person and any person violating this subsection shall be personally liable for making such payment.”

MS State Code, Annotated 1972 section 45-6-11 (3) (a) states “No person shall be appointed or employed as a law enforcement officer or a part-time law enforcement officer unless that person has been **certified** as being qualified under the provisions of subsection (4) of this section” (emphasis added).

MS State Code, Annotated 1972 section 45-6-11 (4) states, in part “In addition to the requirements of subsections (3), (7) and (8) of this section, the board, by rules and regulations consistent with other provisions of law, shall fix other **qualifications** for the employment of law enforcement officers, including minimum age, education, physical and mental standards, citizenship, good moral character, experience and such other matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of law enforcement officers, and the board shall prescribe the means for presenting evidence of fulfillment of these requirements” (emphasis added).

Finding Detail: During our review of salary and fringe benefits, we noted that the Executive Director of the Mississippi Bureau of Narcotics (MBN) directed his staff to buy back his compensatory time on five separate occasions. While the Department of Public Safety (DPS) has special legislative power to purchase compensatory time from employees, authority must come from the Commissioner of Public Safety (as MBN is a Division of such) and must be approved by the Commissioner on a case-by-case basis. The Executive Director received no such permission for four of the five buy backs. Additionally, the Executive Director of MBN did not alert the Commissioner of DPS that such payments had been made. Upon inquiry by auditors, MBN personnel stated that there was no documentation of Commissioner approval for the Executive Director’s buy backs. Additionally, the Commissioner of DPS verbally confirmed to audit staff that he had not authorized the MBN Executive Director to purchase buyouts for himself.

The Executive Director, in total from **2017 and 2018** was paid out **\$27,662** in unapproved compensatory buyouts. Payments are detailed below:

Compensatory Buyouts for Executive Director from Fiscal Years 2017 and 2018

<u>Date</u>	<u>Hours Paid</u>	<u>Amount Paid</u>	
05/31/2017	225	\$12,073.50	Unapproved
12/21/2017	50	\$2,683.00	Approved via Memo
07/10/2018	200	\$10,732.00	Unapproved
09/28/2018	50	\$2,173.23	Unapproved
12/14/2018	50	\$2,683.00	Unapproved

In addition to not receiving the required authorization from the Commissioner for his buy backs, the Executive Director received compensatory buy backs that were only allowed for sworn law enforcement officers, which he is not. First, and included in the \$27,662 amount above, is **\$2,173** that was paid from the federal Domestic Cannabis Eradication/Suppression Program (DCE/SP) grant. This grant only allows payments for sworn law enforcement officers. The Executive Director’s receipt of payment from this grant created an unallowable payment from federal monies.

In addition, as described above in MBN’s internal policies related to compensatory time, employees who are sworn law enforcement officers are only allowed to accrue up to 300 hours of compensatory time while all other employees are limited to only 100 hours of accrued compensatory time. During the time that the Executive Director was initiating buyouts for his compensatory time, he accrued 529 hours of leave, well in excess of the policy maximum. The chart above also describes buy backs for amounts larger than 100 hours, the limit that applies to the Executive Director.

Finally, during this period of compensatory buyouts, the Executive Director did not approve any additional **agency compensatory time** buyouts for his staff that were not entitled to overtime pay in accordance with Fair Labor Standards Act (FLSA). MBN staff confirmed with auditors on multiple occasions that only FLSA compensatory time was included in employee buyouts.

When questioned by auditors, Agency personnel indicated that instructions to buy back compensatory time for FLSA-approved staff would come from DPS. MBN personnel would prepare a list of those

entitled for buy backs. Agency personnel relied on the Director's assurance that he was a sworn law enforcement officer and entitled to such FLSA buy backs. For three of the compensatory buy backs, the Executive staff included the Director's name on the buy-back list due to this reliance. Executive staff was not aware of at least two buy backs in which the Director received payment until the matter was researched internally after auditors questioned the legality of the payments to MBN staff. Additionally, on the buy back occurring in July 2018, the Director was not on the initial list of employees to receive compensatory time buy backs. Upon discovering this, the Director requested that he be paid for 200 hours of "Agency Comp time" on a supplemental check (this request also included one additional employee buy back of 25 FLSA compensatory hours). It should be noted that members of the Executive staff objected to this payment in writing. In short, the Executive Director requested of his Executive staff and then received FLSA buy backs—buy backs applicable to employees making below a certain salary and law enforcement officers, under the protections of federal labor law—on the basis that he was a law enforcement officer. The payments were therefore improper.

Proper internal controls were in place by MBN to assure that the Agency followed protocol in first receiving direction of DPS to purchase compensatory time, and secondly approving such time via the approval process of MBN. However, the Executive Director in several instances overrode these internal controls.

At the conclusion of the review, the Executive Director provided in his response to the findings memorandums from DPS authorizing compensatory buyouts. These memorandums were provided as evidence that the Commissioner had authorized agency compensatory time. However, the memorandums did not coincide with the buyouts as initiated by the Director in four of the five compensatory payouts. Additionally, all memorandums provided by DPS only allow up to 50 or 60 hours of compensatory buy backs. In two instances, the Executive Director was reimbursed for 200 or more hours. In one instance, the Commissioner did authorize a buyout of up to 50 hours of compensatory time and the Executive Director was paid for 50 hours. This approval verifies that the Executive Director was aware approval for buyouts should be made by the Commissioner and that he circumvented controls and policy in order to receive the other unauthorized buyouts.

Failing to comply with state laws and agency policies and procedures resulted in the unapproved payout of \$27,662 to the Executive Director.

During the compliance review, auditors inquired of Executive Staff and the Executive Director under what authority the agency compensatory buyouts occurred. At that time, the Executive Director asserted that he was a sworn law enforcement officer. The Executive Director considered his swearing in as the Executive Director of MBN to be sufficient to purport himself a sworn law enforcement officer, entitling him to the same benefits as all law enforcement officers.

State law requires that law enforcement officers must meet certain "qualifications" in order to be considered law enforcement officers. Those qualifications, or minimum standards, require any sworn law enforcement officers to be certified within one year of taking any law enforcement position, whether the individual is appointed or employed. Therefore, the Executive Director, in order to qualify as a sworn law enforcement officer, would have to be certified as such one year from his employment start date of November 1, 2016. According to the Mississippi Office of Standards and Training, no such certification has been granted to the Executive Director.

According to state law referenced above, if any individual does not meet the minimum standards of certification, the state agency employing said individual is prohibited from paying the salary of the individual or using any public funds to pay for equipment, or support of any law enforcement activities. State law also states that the individual responsible for employment of the non-certified officer will be personally liable to repay these amounts. The Executive Director's salary payments, FICA matching

payments, PERS contributions, procurement card purchases for clothing, and travel amount to approximately **\$313,261** from November 1, 2017 to the date of this report.

Recommendation: We recommend that the Mississippi Bureau of Narcotics and the Department of Public Safety make a formal finding if the Executive Director of MBN is considered a law enforcement officer.

Due to the lack of certification to meet the statutory minimum standards of a law enforcement officer, if MBN finds that the Executive Director is a law enforcement officer, the Commissioner(s) of DPS will be required to reimburse the State **\$313,261** for the continued employment of the Executive Director after his failure to receive certification within one year of his initial employment.

If MBN and DPS find that the Executive Director is not a sworn law enforcement officer, the Executive Director of MBN will be required to reimburse the State **\$27,662** for unauthorized compensatory buyouts. The formal finding from MBN and DPS should be made no later than one week from the date of this report; additionally, any amounts due to the State should be repaid no later than thirty days from the date of this report.

We further recommend that MBN evaluate the internal control structure to prevent further management override of controls.

Agency Response: *MBN provided an initial response to the report findings. Information in these responses was considered and referenced in the report findings, as needed. MBN's response cannot be reproduced in the body of the report due to the length of the response and the attachments provided. The response is provided in its entirety as an attachment to this report. The substance of the response, as summarized by the auditor, is included below.*

MBN **does not concur** with the finding. The following reasons are stated in the response:

- 1) MBN has statutory authority to purchase compensatory buyouts; and as such overrides any Attorney General's opinions to the contrary.
- 2) The Commissioner of DPS authorized buyouts in accordance with the memorandums provided.
- 3) Controls were not overridden as Executive staff were aware of approval of buyouts.
- 4) The Executive Director is a sworn law enforcement officer in that he was given credentials on March 15, 2017 by the Commissioner of DPS that allow him to carry firearms, execute and serve warrants, etc. Additionally, the former Commissioner of DPS swore the Executive Director in and gave him powers equivalent to a law enforcement officer.

Auditor Comments: For purposes of clarity, the following comments will be made on a point-by-point basis.

- 1) The Office of the State Auditor (OSA) recognizes that DPS and its Divisions have the authority to purchase compensatory buyouts. However, these buyouts must be approved and authorized before issuance.
- 2) The memorandums provided do not coincide with the buyouts made by the Executive Director; nor do they include signed consent forms for the Executive Director as requested in the memorandum. Additionally, the memorandums only authorize buyouts of up to 60 hours at a time. Furthermore, there is no evidence that members of MBN received these memorandums.
- 3) MBN personnel have directly contradicted the statement that they were aware of the buyouts and that they were performed in accordance with existing controls. It should be noted that multiple personnel were interviewed by auditors and none corroborated the Executive Director's assertions regarding his compensatory time.

- 4) State law is clear that in order to be a sworn law enforcement officer that said individual must receive certification as such within one year of employment. That certification is a “qualification” (i.e., a condition or standard that must be complied with) under the law. Regardless of any credentials that have been provided by the Commissioner(s) of DPS, certification is a requirement and can only be granted by the Board of Law Enforcement Standards and Training. The Executive Director has not completed the proper training and/or met the minimum standards to obtain that certification.

Finding 2: Agency Should Strengthen Controls to Ensure Compliance with Agency Policies and State Laws over Procurement Cards.

Applicable Law: *Section 25-9-171, Mississippi Code Annotated (1972)*, defines “Improper governmental action” as any action by an employee that is undertaken in the performance of the employee’s official duties, whether or not the action is within the scope of the employee’s employment:

- (i) Which is in violation of any federal or state law or regulation, is an abuse of authority, results in substantial abuse, misuse, destruction, waste, or loss of public funds or public resources, or
- (ii) Which is of substantial and specific danger to the public health or safety, or
- (iii) Which is discrimination based on race or gender.

Mississippi Bureau of Narcotics’ General Order 3-05 states, in part, “Bureau agents, at the discretion of the Director and as authorized by law, may be authorized a clothing allowance to be used for the purchase of non-issued articles of clothing and other items directly related to and required by the nature of official duties. The Director shall authorize such allowances upon a yearly basis, in writing, the articles approved for purchase, and the amount of allowance.

1. Purchases of clothing suitable for wear during court appearances and for other official purposes may be authorized. Purchases of clothing items for use in hunting and other related activities are expressly prohibited.
2. Purchases of jewelry, underwear, or items of clothing of extravagant cost are expressly prohibited.
3. Purchases must be charged to Approved Bureau Credit Cards. Agents making such purchases:
 - a) shall identify themselves to sales clerks
 - b) shall provide to clerks the Bureau sales tax-exemption number
 - c) shall sign sales invoices and mark them with their badge numbers

Auditor’s Note: Throughout the *Mississippi Bureau of Narcotics’ General Orders*, the term “Agent” is used to describe a sworn law enforcement officer, and the term “Other employees of the Bureau” are used to describe non-law enforcement personnel.

Information detailing the Executive Director’s failure to meet the requirements of a sworn law enforcement officer can be found in **Finding 1**.

Finding Detail: Based on our review of the Mississippi Bureau of Narcotics procurement card expenditures, it was noted that eight (8) out of thirty-five (35) transactions reviewed (100% of expenditures made from the Executive Director’s card) were for clothing purchases for the Executive Director. These purchases totaled **\$2,450**. While the General Orders of MBN allow for sworn law enforcement officers to purchase uniforms and clothing for use as their role in enforcing the law, these orders do not permit civilians to make use of these allowances. Therefore, these purchases are considered a violation of state law.

Examples of purchases that are disallowed:

- \$1,244 for polo shirts, pants, sports coats, ties and other clothing items
- \$1,011 for boots and belts
- \$195 for Cole Haan shoes

Failure to follow guidelines set by state law and the agency's *General Orders* may result in fraudulent transactions, waste, and abuse of funds.

Recommendation: We recommend the Mississippi Bureau of Narcotics strengthen controls over procurement card clothing expenditures to ensure purchases are proper and appropriately reviewed. Additionally, we recommend the Executive Director reimburse MBN for the unauthorized purchases.

Agency Response: *MBN provided an initial response to the report findings. Information in these responses was considered and referenced in the report findings, as needed. MBN's response cannot be reproduced in the body of the report due to the length of the response and the attachments provided. The response is provided in its entirety as an attachment to this report. The substance of the response, as summarized by the auditor, is included below.*

MBN **does not concur** with the finding. MBN asserts that the Executive Director is a sworn law enforcement officer and therefore is entitled to the clothing allowance.

Auditor Comments: OSA contends that the Executive Director is not a sworn officer and is not entitled to the clothing allowance. Additionally, the General Order states that items of "extravagant cost" are not permitted. Items purchased by the Executive Director exceed a reasonable cost for clothing items.

Finding 3: Agency Should Strengthen Controls to Ensure Compliance with State Laws and Regulations over Fringe Benefits.

Internal Control and Applicable State Law: Pursuant to *Mississippi Code Annotated 1972, Section 27-104-3(c)*, the Department of Finance and Administration (DFA) issued the *Mississippi Agency Accounting Policies and Procedures* (MAAPP) manual to provide authoritative instructions to state agencies on the application of accounting policies, procedures, and systems.

The *MAAPP Manual, Section 20.20.30*, states that "certain types of state owned vehicles used by the employees for personal use or commuting to and from work can constitute a taxable benefit to the employee ... the value of employer-provided vehicles used by state employees for commuting and personal use must be included in social security, federal and state income tax and retirement wage bases."

The *MAAPP Manual* allows four (4) criteria to determine the value of the commuting service for purposes of inclusion of a taxable benefit. These criteria restate Internal Revenue Service (IRS) regulations as described in detail in *IRS Publication 15-B Employers Tax Guide to Fringe Benefits*.

These criteria are summarized below:

- A. The employer provides the vehicle to the employee for use in trade or business, and the employee is required to commute in the provided vehicle.
- B. The employer establishes a written policy prohibiting the vehicle for personal use.
- C. The employee does not use the vehicle for personal purposes, as described in the policy referenced above.

- D. The employee allowed to commute in any automobile (as defined by the IRS) is not a “control employee” – meaning the employee is not an elected official or does not exceed federal restrictions on salary.

If the above criteria are met, employers must include \$1.50 for each one-way commute in the employee’s taxable wages. Meaning that, on average, employers that commute each workday in the year would report an additional \$780 in wages. In calculating the deficiency of commuter wages reported by MBN, auditors assumed the above criteria were met, and that \$3.00 daily should have been included in taxable wages.

Finding Detail: During our review of the Mississippi Bureau of Narcotics fringe benefits, it was noted that the agency did not record fringe benefits for five (5) employees’ assigned vehicles for commuting to and from work. A three dollar (\$3) per day fringe benefit should have been recorded for each employee assigned a vehicle used for commuting purposes that is not listed as a law enforcement officer. Approximately \$3,720 in total fringe benefits were not recorded for the 2018 fiscal year. The employees noted as being assigned a vehicle were as follows:

1. Executive Director
2. MINI Coordinator
3. Communications
4. Tech Officer
5. Maintenance

Failure to record fringe benefits received by employees may result in understating employees’ benefits received through use of the agency’s vehicles for commuting to and from work. Additionally, not recording benefit of use of the agency’s vehicles could result in waste and abuse of the agency’s assets by not tracking employee use of assigned vehicles.

Recommendation: The Mississippi Bureau of Narcotics should strengthen controls over the recording of fringe benefits and properly compute fringe benefits as a part of the individual’s income reporting for federal and state tax purposes.

Agency Response: *MBN provided an initial response to the report findings. Information in these responses was considered and referenced in the report findings, as needed. MBN’s response cannot be reproduced in the body of the report due to the length of the response and the attachments provided. The response is provided in its entirety as an attachment to this report. The substance of the response, as summarized by the auditor, is included below.*

MBN **concur**s on all parts of the finding **except** the fringe benefits related to the Executive Director. MBN asserts that the Executive Director is a sworn law enforcement officer and is therefore not required to record fringe benefits for commuting purposes. MBN provided a corrective action plan that is attached to this report.

Finding 4: Agency Should Strengthen Controls to Ensure Compliance with State Laws over Reimbursement for Travel Expenditures.

Internal Control and Applicable State Law: *Mississippi Code Annotated 27-65-105 (1972), allows for a tax exemption for government entities when lodging is direct billed to the agency. MAAPP Manual Section 19.20.10 also states, “Travel reimbursements will be made for all taxes paid by the traveler;*

however, when expenses are billed directly to the governmental entity, taxes should not be charged and paid.”

MAAPP Manual, Section 19.20.10, states “The Travel Voucher form 19.20.10 is used to request reimbursement of official business related travel expenses by state employees, contract workers and board members. Any other form used by an agency must be approved by DFA OPT.”

The Internal Control – Integrated Framework published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) specifies that a satisfactory control environment is only effective when there are adequate control activities in place. Effective control activities dictate that supervisory approval from personnel independent of inventory management should be obtained prior to the disposal of capital assets.

Finding Detail: Based on our review of thirty (30) Travel expenditures, the following exceptions were noted:

- Two (2) instances in which the direct bill from the hotel included sales tax in the charges totaling \$54
- One (1) instance in which the travel voucher was not attached to the payment documentation

Failing to comply with state travel laws, rules and regulations could result in incorrect or improper payments to employees for reimbursement of travel expenses.

Recommendation: The Mississippi Bureau of Narcotics should comply with state laws and regulations in regards to travel expenses and reimbursements.

Agency Response: *MBN provided an initial response to the report findings. Information in these responses was considered and referenced in the report findings, as needed. MBN’s response cannot be reproduced in the body of the report due to the length of the response and the attachments provided. The response is provided in its entirety as an attachment to this report. The substance of the response, as summarized by the auditor, is included below.*

MBN **concur**s with the finding and has provided a corrective action plan that is attached to this report.

Finding 5: Agency Should Strengthen Controls to Ensure Compliance with the MAAPP Manual and Regulations over Bank Accounts.

Internal Control and Applicable State Law: Pursuant to *Section 27-104-3(c), Mississippi Code Annotated 1972*, the Department of Finance and Administration (DFA) issued the *Mississippi Agency Accounting Policies and Procedures* (MAAPP) manual to provide authoritative instructions to state agencies on the application of accounting policies, procedures, and systems.

Per the *Mississippi Agency Accounting Policies and Procedures Manual (MAAPP), Section 29.60.35* form, completed by the agency, the account requires two authorized signors to sign checks from the agency’s legal fee account.

Additionally, *The Internal Control – Integrated Framework published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO)* specifies that a satisfactory control environment is only effective when there are adequate control activities in place. Effective control activities dictate that proper segregation of duties exist between personnel signing checks and personnel depositing or cashing

checks. An authorized signor of an account should not be able to deposit or cash a check from same account to safeguard against loss from unauthorized use, fraud, or theft. COSO also dictates that the agency prepares reconciliations for all bank accounts held by the agency.

Finding Detail: During our review of nine (9) bank accounts held by the Mississippi Bureau of Narcotics outside of the Mississippi State Treasury, we noted the following discrepancies:

- Two (2) checks were addressed to an authorized signor of an account from which the checks were written.
- One (1) bank account was authorized with a minimum and maximum balance of \$0.00. Account was noted to have an ending balance of \$558,296 at the end of 2018 fiscal year.
- One (1) check from the agency's legal fees account had only one (1) authorized signor on the check.
- Agency does not prepare a proper monthly reconciliation for any of the nine (9) bank accounts held outside of Mississippi State Treasury.

Additionally, during our review of the Mississippi Bureau of Narcotics, a lack of segregation of duties was noted. In many instances, one (1) person receives the checks, prepares the deposit slips, makes the deposits, is authorized to sign checks, and approves distribution of funds.

Not maintaining accounts as authorized by *MAAPP Manual, Section 29.60.35* may result in accounts operating in manner not allowed by Mississippi State Treasury. Additionally, not performing proper reconciliations for bank accounts may result in unapproved transactions and misuse of public funds from accounts held outside of State Treasury. Failure to segregate these functions properly increases the possibility of fraud, waste, and/or misuse of public funds.

Recommendation: The Mississippi Bureau of Narcotics should comply with established regulations and update internal control procedures to establish proper segregation of duties regarding bank accounts.

Agency Response: *MBN provided an initial response to the report findings. Information in these responses was considered and referenced in the report findings, as needed. MBN's response cannot be reproduced in the body of the report due to the length of the response and the attachments provided. The response is provided in its entirety as an attachment to this report. The substance of the response, as summarized by the auditor, is included below.*

MBN **concur**s with the finding and has provided a corrective action plan that is attached to this report.

OTHER CONTROL DEFICIENCIES

Finding 6: Agency Should Strengthen Controls to Ensure Compliance with State Laws over Properly Documenting and Recording Employee Leave.

Internal Control Deficiency and Applicable State Laws: *Mississippi Bureau of Narcotics' General Order 1-04, Section III, states, "Sworn personnel shall submit activity reports (28-day report) to their immediate supervisor. It shall then be approved and forwarded to the Personnel Officer for processing by the seventh working day following the end of each 28-day period."*

Finding Detail: During our review of thirty-five (35) employee's timesheets, we noted the following instances:

- One (1) instance in which an employee's timesheet did not match what was reported in SPHARS
- Seven (7) instances in which "28-day timesheets" did not have a signature of approval

Failing to comply with state laws, and agency policies and procedures could result in additional payouts of non-qualifying personnel. Additionally, failure to comply with state laws over leave could result in the use of leave time not earned by the employee or use of the wrong type of leave.

Recommendation: We recommend that the Mississippi Bureau of Narcotics should comply with state laws and regulations regarding the submission and approval of time. Additionally, we recommend that Mississippi Bureau of Narcotics follow agency policies and procedures regarding the accumulation and approval of leave.

Agency Response: *MBN provided an initial response to the report findings. Information in these responses was considered and referenced in the report findings, as needed. MBN's response cannot be reproduced in the body of the report due to the length of the response and the attachments provided. The response is provided in its entirety as an attachment to this report. The substance of the response, as summarized by the auditor, is included below.*

MBN **concurs** with the finding and has provided a corrective action plan that is attached to this report.

Finding 7: Agency Should Strengthen Controls to Ensure Compliance with Travel Policies and Procedures over Commodities.

Internal Control Deficiency: Office of Purchasing, Travel and Fleet Management *Fleet Manual, Section 6.102*, states, "Only regular unleaded gasoline or diesel from self-service pumps should be used. No higher-octane gas is to be purchased."

Finding Detail: Based on our review of the Mississippi Bureau of Narcotics commodity expenditures, it was noted that the agency purchased higher-octane fuel on twenty-one (21) out of twenty-four (24) Fuelman invoices reviewed. We noted \$2,002 worth of purchases of higher-octane fuel purchases out of \$20,779, or 10% of Fuelman purchases reviewed.

Failure to follow guidelines set by the Office of Purchasing, Travel and Fleet Management's *Fleet Manual* may result in fraudulent transactions, waste, and abuse of funds.

Recommendation: The Mississippi Bureau of Narcotics should strengthen controls over fuel purchases by instructing staff that higher-octane fuels are not to be purchased with the agency's Fuelman credit cards.

Agency Response: *MBN provided an initial response to the report findings. Information in these responses was considered and referenced in the report findings, as needed. MBN's response cannot be reproduced in the body of the report due to the length of the response and the attachments provided. The response is provided in its entirety as an attachment to this report. The substance of the response, as summarized by the auditor, is included below.*

MBN **concurs** with the finding and has provided a corrective action plan that is attached to this report.

End of Report



STATE OF MISSISSIPPI
DEPARTMENT OF PUBLIC SAFETY
MISSISSIPPI BUREAU OF NARCOTICS

MARSHALL FISHER
COMMISSIONER

PHIL BRYANT
GOVERNOR

JOHN M. DOWDY, JR.
DIRECTOR

COMPLIANCE REVIEW FINDINGS

December 3, 2019

Shad White, State Auditor
Office of the State Auditor
State of Mississippi
P. O. Box 956
Jackson, MS 39205-0956

Dear Mr. White:

The Mississippi Bureau of Narcotics (“Agency”) has received the Limited Internal Control and Compliance Review Findings for the Mississippi Bureau of Narcotics for the Fiscal Year 2018. The Agency appreciates the time and effort the Auditor’s office spent during this review process. Through the responses below, the Agency responds as follows to each individual finding:

AUDIT FINDINGS:

FINDING 1:

AGENCY SHOULD STRENGTHEN CONTROLS TO ENSURE COMPLIANCE WITH STATE LAW COMPENSATORY TIME BUYOUTS.

AGENCY RESPONSE:

The Agency has reviewed the Auditor’s finding with regards to Compensatory (“Comp”)

time buybacks and respectfully disagrees with regards to the authority and approval process in issuance of such payments, as well as, the classification of the Director as a non-sworn officer.

I. STATUTORY AUTHORITY GRANTING THE AGENCY THE ABILITY TO PURCHASE COMP TIME

The Auditor cites a 1992 and 1996 Attorney General’s Opinion as justification that Comp time cannot be bought back through a lump sum payment. See Charles S. Head, 1992 WL 613972 (1992); Hugh D. Deating, 1996 WL 50176 (1996). Citing these two (2) Attorney General’s Opinions *alone* overlooks the fact the Agency was given the authority by the Legislature to purchase such time through legislative enactment by *subsequent* Senate Appropriation Bills. See Senate Bill 3019 (2019); Senate Bill 2958 (2018); Senate Bill 2968 (2017). Additionally, a more recent Attorney General’s Opinion, Ernest D. Strange, 2002 WL 31663387 (2002), contradicts the earlier Opinions cited by the Auditor’s Office that Comp time cannot be purchased through a lump sum payment by the Agency. See Ex. G.

With respect to the authority granted to the Mississippi Department of Public Safety (“MDPS”) to purchase Comp time, the Mississippi Legislature specifically provided in Senate Bill 3019 (2019), Senate Bill 2958 (2018) and Senate Bill 2968 (2017) that “Any funds in the Salary, Wages and Fringe Benefits major object of expenditure *may be used to purchase accumulated compensatory time* within funds available.” The clear and unambiguous legislative language in the above referenced Senate Bills provides the Commissioner of Public Safety with the authority to authorize Comp time buy backs, which the Commissioner did on the cited occasions.

The finding that the Commissioner of Public Safety never authorized such buy backs and such approval is subject to the approval of the Mississippi State Personnel Board (“MSPB”) is

misplaced. In fact, the Commissioner did specifically authorize buybacks in fifty (50) and sixty (60) hour increments as illustrated in the attached Exhibits.¹ See Ex. A. Approval from the MSPB is not required. A practical reading of the Senate Bills illustrates the only reference requiring MSPB approval applies *solely* to “corrective salary adjustments be made ... where an inequity was created between employees of equivalent capacity by previous application of the agency appropriation acts.”

The Agency respectfully disagrees with the Auditor’s finding that the Director “circumvented controls” in order to request buybacks from Executive Staff who were unaware that it may not be permitted and that the members of Executive Staff objected to this payment in writing and were unaware of at least two (2) buybacks. The Director, as well as all other members of the Agency, were provided memos and notifications from the Commissioner of MDPS authorizing such buybacks. The Comp time buybacks was offered and purchased Agency wide. The alleged “Executive Staffs’ objection in writing” appears to be a hand written partial sentence on a printed email to the payroll clerk only and it is unclear when that “objection” was written or to whom it was given too. The Agency is not aware of anyone, including the Commissioner, who received notification of any objection from the Agency’s Executive Staff of any concern or disapproval. The referenced executive staff received the email and processed the buybacks, therefore it is a misnomer that any claim or statement can be made that they were “unaware” of such buybacks.

Under a statutory construction analysis, the Senate Bills control, authorizing the Agency to purchase any Comp time subject to availability of funds. Agency General Order 1-04 recognizes the priority of the Mississippi State Personnel Board as controlling over Agency Policy. Statutory authority in turn, would be controlling over any Agency policy or enactment by the MSPB that is

¹ The Agency respectfully requests that the Auditor’s Office adjust the amount owed by the Director to reflect the amount of Comp time which was specifically approved by the Commissioner in each buyout as illustrated in Ex. A.

in conflict. Miss. Code Ann. § 25-3-92(1) states, “when, in the opinion of the appointing authority it is essential that a state employee work after normal working hours, the employee may receive credit for compensatory leave.” The Senate Bills then control and allow the Agency to purchase any Comp time subject to availability of funds.

II. STATUTORY AUTHORITY GRANTING POWERS OF A SWORN OFFICER

The Agency also respectfully disagrees that the Director is not a sworn officer. During the compliance review meeting attended by the Commissioner, Director, Agency Legal, and Agents from the Auditor’s Office, it was stated by the Auditor representative “that if the Director was a sworn officer, the issue of Comp time would be moot.” It is correct that obtaining a Professional Certificate from the Board of Minimum Standards and Training is one way to become a sworn officer, but it is not the only way, as legislative enactments create other avenues to obtain sworn status. The Agency believes that multiple factors indicate the Director is a sworn officer.

First, the Director is a sworn officer as evidenced by his credentials issued to him by the Commissioner of MDPS on March 15, 2017. See Ex. B. The credentials state that the Director is a *sworn* Mississippi Bureau of Narcotics Agent that is authorized to: *carry firearms; execute and serve warrants, arrest warrants, subpoenas and summonses issued under the authority of this state; to make arrests without warrant for any offense under state narcotics law committed in their presence, or if they have probable cause to believe that the person to be arrested has committed or is committing a crime; make seizures of property pursuant to state narcotics law; and to investigate deaths caused by drug overdose or which are believed to be caused by drug overdose.* The authority given to the Director is consistent with the definition of a sworn officer under both state and federal law.²

² 18 U.S.C. §926(b) defines the criteria of a qualified sworn officer, all of which the Director meets.

Second, the Director was sworn in by previous MDPS Commissioner Albert Santa Cruz and given powers of a sworn officer equivalent to those above. Miss. Code Ann. § 45-1-2(3) states, “The Commissioner, may assign to the appropriate offices such powers and duties as deemed appropriate to carry out the department’s lawful functions.” Furthermore Miss. Code Ann. § 41-29-107 states, “The Commissioner may assign to the appropriate offices of the department such powers and duties deemed appropriate to carry out the lawful functions of the Mississippi Bureau of Narcotics.” The statutory authority as referenced above to appoint sworn officers without formal academy certification is analogous to Miss. Code Ann. § 7-1-19, which grants the Governor the authority to appoint such investigators and other qualified personnel... who have full [law enforcement] powers. Notwithstanding the above authority, Miss. Code Ann. § 41-29-159 specifically provides “any officer or employee of the Mississippi Bureau of Narcotics.....may, while engaged in the performance of his statutory duties: (1) *carry firearms; (2) execute and serve warrants, arrest warrants, subpoenas and summonses issued under the authority of this state; (3) make arrests without warrant for any offense under state narcotics law committed in their presence, or if they have probable cause to believe that the person to be arrested has committed or is committing a crime; (4) make seizures of property pursuant to state narcotics law.*”

Third, Miss. Code Ann. § 41-29-112(9), which governs certain law enforcement agents within the Agency, gives the Director *all powers necessary and incidental* to the effective operation of this section. Fourth, Senate Bill 2500 states the Director’s title to be *Colonel* of the Agency.

In reviewing all statutes and authority in *pari materi*, the Agency believes the Director is a sworn officer, as he has been vested with authority consistent with the statutory definition of a sworn officer. Thus the Director should be eligible to receive buyouts (as other Agents) from the

Federal Domestic Cannabis Eradication/Suppression Program (“DCE/SP”) grant.

CORRECTIVE ACTION PLAN

In consideration of the above, the Agency respectfully requests the Auditor’s Office to consult with the Attorney General’s Office before publishing any findings, and reconsider Finding 1, before the Agency determines an appropriate Corrective Action Plan.

FINDING 2:

AGENCY SHOULD STRENGTHEN CONTROLS TO ENSURE COMPLIANCE WITH AGENCY POLICIES AND STATE LAWS OVER PROCUREMENT CARDS.

AGENCY RESPONSE:

The Agency believes the Director is a sworn officer as discussed through their response to Finding 1, and is therefore eligible to receive a clothing allowance as allowed pursuant to Agency Policy.

CORRECTIVE ACTION PLAN

In consideration of the above, the Agency respectfully requests the Auditor’s Office to consult with the Attorney General’s Office before publishing any findings and reconsider Finding 2, before the Agency determines an appropriate Corrective Action Plan.

FINDING 3:

AGENCY SHOULD STRENGTHEN CONTROLS TO ENSURE COMPLIANCE WITH STATE LAWS AND REGULATIONS OVER FRINGE BENEFITS.

AGENCY RESPONSE:

The Agency agrees to all the findings during the audit with the fringe benefits, with exception to the Director, as the Agency believes he is a sworn officer as described previously by the Agency through their response to Finding 1. Additionally, Miss. Code Ann. §25-1-87,

specifically allows the Director to be issued an unmarked vehicle. The Agency hereby incorporates their prior response to this finding. See Ex. C.

CORRECTIVE ACTION PLAN

- a. The Agency sent a Memo on June 28, 2019 removing the 4 non-sworn officers from state vehicles. Any non-sworn officer issued a state vehicle in the future will abide with regulations set forth in the MAAPP Manual.
- b. Person Responsible for Action: Deputy Director Steven Maxwell
- c. Action Effective Date: Immediately upon issuance of this response.
- d. The Agency respectfully requests the Auditor's Office to consult with the Attorney General's Office before publishing any findings and to reconsider their position on the Director's use of his vehicle as he is a sworn law enforcement officer.

FINDING 4:

AGENCY SHOULD STRENGTHEN CONTROLS TO ENSURE COMPLIANCE WITH STATE LAWS OVER REIMBURSEMENT FOR TRAVEL EXPENDITURES.

AGENCY RESPONSE:

The Agency agrees to all the findings during the audit with regards to Reimbursement for Travel Expenditures and hereby incorporates their prior response. See Ex. D.

CORRECTIVE ACTION PLAN

- a. See attached response in Ex. D.
- b. Person Responsible for Action: Shauna Powell
- c. Action Effective Date: Immediately upon issuance of this response.
- d. N/A

FINDING 5:

AGENCY SHOULD STRENGTHEN CONTROLS TO ENSURE COMPLIANCE WITH THE MAAPP MANUAL AND REGULATIONS OVER BANK ACCOUNTS.

AGENCY RESPONSE:

The Agency agrees to all the findings during the audit with regards to Compliance with the MAAPP Manual and Regulations over Bank Accounts and hereby incorporates their prior response. See Ex. E.

CORRECTIVE ACTION PLAN

- a. See attached response in Ex. E.
- b. Person Responsible for Action: Shauna Powell
- c. Action Effective Date: Immediately upon issuance of this response.
- d. N/A

FINDING 6:

AGENCY SHOULD STRENGTHEN CONTROLS TO ENSURE COMPLIANCE WITH STATE LAWS OVER PROPERLY DOCUMENTING AND RECORDING EMPLOYEE LEAVE.

AGENCY RESPONSE:

The Agency agrees to the findings regarding documentation and recording leave time and has appropriately addressed the issues as indicated in their prior response. See Ex. F. The Agency respectfully disagrees that the 1992 and 1996 Attorney General's Opinions cited by the Auditor's Office supporting the finding that Comp time cannot be bought back through a lump sum payment is the controlling authority. See Charles S. Head, *1992 WL 613972* (1992); Hugh D. Deating, *1996 WL 50176* (1996). The Agency was given the authority by the Legislature to pay such time through the previously referenced Senate Bills and a more recent Attorney General's Opinion as referenced

above. Ernest D. Strange, *2002 WL 31663387* (2002), specifically contradicts the earlier Opinions cited by the Auditor's Office which state Comp time purchases cannot be bought back in a lump sum by the Agency. See Ex. G.

CORRECTIVE ACTION PLAN

- a. See attached response in Ex. F.
- b. Person Responsible for Action: Shauna Powell
- c. Action Effective Date: Immediately upon issuance of this response.
- d. The Agency respectfully requests the Auditor's Office to consult with the Attorney General's Office before publishing any findings and reconsider their position on the Agency's authority of payment of Comp time through a lump sum, as this authority was clearly vested upon the Agency through Senate Bills 3019, 2958, and 2968. Such authority is also illustrated through Attorney General Opinion Earnest D. Strange, *2002 WL 31663387* (2002).

FINDING 7:

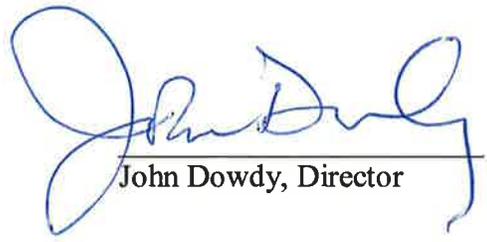
AGENCY SHOULD STRENGTHEN CONTROLS TO ENSURE COMPLIANCE WITH TRAVEL POLICIES AND PROCEDURES OVER COMMODITIES.

AGENCY RESPONSE:

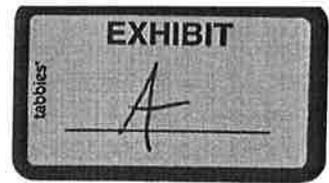
The Agency agrees to the findings regarding Compliance with Travel Policies and Procedures over Commodities and has appropriately addressed the issues as indicated in their prior response. See Ex. H.

CORRECTIVE ACTION PLAN

- a. See attached response in Ex. H.
- b. Person Responsible for Action: Deputy Director Steven Maxwell
- c. Action Effective Date: Immediately upon issuance of this response.
- d. N/A



John Dowdy, Director



All DPS Group

11/21/2019

Dywana Broughton
Kim Richardson
Jennifer Brown
Williams, Eugene
Catchot, Robin
Dowdy, John
Pope, Jennifer
Maxwell, Steve
Killebrew, Allison
Camillia Rose
Troop J Group
Motor Carrier Group
HLS Group
Troop F Group
CIC Group
Troop M Group
Troop E Group
Troop K Group
HQ Group
Troop D Group
PSP Group
Troop G Group
All MCL Group
Troop H Group
Academy Group
MSAIC Group
MBI Group
FleetComm Group
Troop C Group



STATE OF MISSISSIPPI
PHIL BRYANT, GOVERNOR
DEPARTMENT OF PUBLIC SAFETY
MISSISSIPPI HIGHWAY SAFETY PATROL
MARSHALL L. FISHER, COMMISSIONER

COMPENSATORY LEAVE BUYOUT CONSENT FORM

I, _____, hereby give written consent to the Department of Public Safety
LEGAL NAME – PRINT LEGIBLY

I, _____, **DO NOT** give written consent to the Department of Public Safety
LEGAL NAME –PRINT LEGIBLY

to purchase up to 50 hours of compensatory leave from my leave balance as of May 31, 2017. I understand participation in this buyout is voluntary and mandatory deductions (retirement and taxes) will be withheld from this buyout. I, further understand if I do not have 50 hours of FLSA available, Agency Compensatory leave up to 50 hours will be purchased.

Please indicate choice below:

- Purchase up to 50 hours FLSA and/or Agency Compensatory Leave
- DO NOT PURCHASE COMPENSATORY LEAVE**

Name

Date

SSN (last 4 digits)



STATE OF MISSISSIPPI
PHIL BRYANT, GOVERNOR
DEPARTMENT OF PUBLIC SAFETY
MISSISSIPPI HIGHWAY SAFETY PATROL
MARSHALL L. FISHER, COMMISSIONER

TO: DPS Supervisors
From: Commissioner Marshall Fisher *mf*
Date: June 1, 2017
Subject: Purchase of Compensatory Leave

I have authorized the agency to purchase up to fifty (50.00) hours compensatory leave for all employees. Employees may choose to opt out of the buyout. If an employee chooses to have comp time purchased, the agency will purchase up to fifty hours of FLSA and/or Agency compensatory time. In the event an employee does not have fifty hours of FLSA and Agency compensatory leave, the agency will purchase whatever amount of FLSA and agency compensatory leave the employee has available. FLSA and Agency compensatory leave may be combined for 50.00 hours.

Please have each employee under your supervision complete the attached authorization form to indicate if he/she wishes to participate in the purchase of compensatory leave. The completed forms for your area of supervision must be returned to Human Resources no later than noon **June 12, 2017**.

Questions/concerns may be directed to Human Resources at (601) 987-1264.

cc: Director Pat Cronin
Colonel Chris Gillard
Lieutenant Colonel Randy Ginn
Director Wendy Crumpton
Director Mark Valentine



STATE OF MISSISSIPPI
PHIL BRYANT, GOVERNOR
DEPARTMENT OF PUBLIC SAFETY
MISSISSIPPI HIGHWAY SAFETY PATROL
MARSHALL L. FISHER, COMMISSIONER

COMPTIME BUYOUT CONSENT FORM

I, _____, hereby give written consent to the Department of Public Safety
LEGAL NAME - PRINT LEGIBLY

I, _____, DO NOT give written consent to the Department of Public Safety
LEGAL NAME - PRINT LEGIBLY

to purchase up to 50 hours of compensatory time from my leave balance as of October 31, 2017. I understand participation in this buyout is voluntary and mandatory deductions (retirement and taxes) will be withheld from this buyout. I further acknowledge the Department will purchase the compensatory time earned from either my FLSA balance or my Agency Comp balance based on the type of compensatory time earned.

Please indicate choice below:

- Purchase up to 50 hours compensatory leave
- DO NOT purchase compensatory leave

Signature

Date

Last 4 of SSN



STATE OF MISSISSIPPI
PHIL BRYANT, GOVERNOR
DEPARTMENT OF PUBLIC SAFETY
MISSISSIPPI HIGHWAY SAFETY PATROL
MARSHALL L. FISHER, COMMISSIONER

MEMORANDUM

To: All DPS Employees
From: Commissioner Marshall Fisher *mf*
Date: November 20, 2017
Subject: Purchase of Compensatory Leave

I have authorized the agency to purchase up to fifty (50.00) hours compensatory leave for all employees. Employees must have a minimum balance of 5.00 hours in order to participate in the buyout. Employees may choose to opt out of the buyout. If an employee chooses to have comp time purchased, the agency will purchase up to fifty hours of FLSA and/or Agency compensatory time.

Attached is a 'Comptime Buyout Consent Form'. Please complete the form indicating whether you wish to participate in the purchase of compensatory leave. Submit the completed form to your supervisor/department head/agency head.

All forms must be completed and submitted not later than noon **November 28, 2017**.

Questions/concerns may be directed to Human Resources at (601) 987-1264.

Cc: Colonel Chris Gillard
Lieutenant Colonel Randy Ginn
Director Pat Cronin
Director Wendy Crumpton
Director Mark Valentine



STATE OF MISSISSIPPI
PHIL BRYANT, GOVERNOR
DEPARTMENT OF PUBLIC SAFETY
MISSISSIPPI HIGHWAY SAFETY PATROL
MARSHALL L. FISHER, COMMISSIONER

COMPTIME BUYOUT CONSENT FORM

I, _____, hereby give written consent to the Department of Public Safety
LEGAL NAME - PRINT LEGIBLY

I, _____, DO NOT give written consent to the Department of Public Safety
LEGAL NAME - PRINT LEGIBLY

to purchase up to fifty (50.00) hours of compensatory time from my leave balance as of April 30, 2018. I understand participation in this buyout is voluntary and mandatory deductions (retirement and taxes) will be withheld from this buyout. I further acknowledge the Department will purchase the compensatory time earned from either my FLSA balance or my Agency Comp balance based on the type of compensatory time earned.

Please indicate choice below:

- Purchase up to 50 hours compensatory leave
- DO NOT purchase compensatory leave

Signature

(DO NOT TYPE SIGNATURE)

Date

Last 4 of SSN



STATE OF MISSISSIPPI
PHIL BRYANT, GOVERNOR
DEPARTMENT OF PUBLIC SAFETY
MISSISSIPPI HIGHWAY SAFETY PATROL
MARSHALL L. FISHER, COMMISSIONER

MEMORANDUM

To: All DPS Employees
From: Commissioner Marshall Fisher *MF*
Date: May 7, 2018
Subject: Purchase of Compensatory Leave

I have authorized the agency to purchase up to fifty (50.00) hours compensatory leave for all employees. Employees must have a minimum balance of 5.00 hours in order to participate in the buyout. Employees may choose to opt out of the buyout. If an employee chooses to have comp time purchased, the agency will purchase up to fifty hours of FLSA and/or Agency compensatory time.

Attached is a 'Comptime Buyout Consent Form'. Please complete the form indicating whether you wish to participate in the purchase of compensatory leave. Submit the completed form to your supervisor/department head/agency head.

All forms must be completed and submitted not later than **May 18, 2018**.

Questions/concerns may be directed to Human Resources at (601) 987-1264.

Cc: Colonel Chris Gillard
Lieutenant Colonel Randy Ginn
Director Pat Cronin
Director Wendy Crumpton
Director Mark Valentine



COMPTIME BUYOUT ELECTION FORM

The Department of Public Safety shall engage in a Compensatory Buyout process to purchase up to fifty (50) hours of compensatory time from employee leave balances as of October 31, 2018. All employees should understand that participation is voluntary and mandatory deductions (retirement and applicable taxes) will be withheld from this buyout. Be aware that the Department will purchase the compensatory time earned from FLSA or Agency Comp balances based on the type of compensatory time earned.

PLEASE CHECK ONLY ONE BOX:

- I do wish to participate. Please purchase _____ hours of compensatory leave.
of hours
- I do **NOT** wish to participate.

PRINT LEGAL NAME LEGIBLY

LAST 4 OF SSN

SIGNATURE

DATE

This election form is due to Human Resources by 5:00 p.m. on Wednesday, November 14th.

Form can be hand delivered or sent via email to humanresources@dps.ms.gov.



COMPTIME BUYOUT ELECTION FORM

The Department of Public Safety shall engage in a Compensatory Buyout process to purchase between five (5) and (60) hours of compensatory time from employee leave balances as of April 1, 2019. All employees should understand that participation is voluntary and mandatory deductions (retirement and applicable taxes) will be withheld. The Department will purchase from FLSA or Agency Comp balances based on the type of compensatory time earned.

I acknowledge the following:

This form will be voided if signed by anyone other than the employee.

This form must contain the employee's original handwritten signature. Do not use Adobe Fill & Sign to type or draw your signature.

This form should be a scanned 8.5 x 11 document and emailed in PDF format. Picture formats of this form will not be accepted (i.e. jpg, jpeg, png, bmp)

This form is due by NOON on Friday, April 19, 2019.

This form should be hand-delivered to Human Resources or emailed in PDF format to humanresources@dps.ms.gov.

This form will not be returned for corrections.

CHECK ONLY ONE BOX:

I do wish to participate. Please purchase _____ hours.
of hours

I do NOT wish to participate.

PRINT LEGAL NAME LEGIBLY

LAST 4 OF SSN

ORIGINAL HANDWRITTEN SIGNATURE

DATE

FOR HR/PAYROLL USE ONLY

SPAHR'S AGENCY: _____

BALANCE SUFFICIENT: YES NO

ENTERED BY: _____

MODIFIED AMOUNT: _____



COMPTIME BUYOUT ELECTION FORM

The Department of Public Safety shall engage in a Compensatory Buyout process to purchase between five (5) and sixty (60) hours of compensatory time from employee leave balances as of September 30, 2019. All employees should understand that participation is voluntary and mandatory deductions (retirement and applicable taxes) will be withheld. The Department will purchase from FLSA or Agency Comp balances based on the type of compensatory time earned.

I acknowledge the following:

This form will be voided if signed by anyone other than the employee.

This form must contain the employee's original handwritten signature. Do not use Adobe Fill & Sign to type or draw your signature.

This form should be a scanned 8.5 x 11 document and emailed in PDF format. Picture formats of this form will not be accepted (i.e. jpg, jpeg, png, bmp)

This form is due by NOON on Thursday, October 24, 2019.

This form should be hand-delivered to Human Resources or emailed in PDF format to humanresources@dps.ms.gov.

This form will not be returned for corrections.

CHECK ONLY ONE BOX:

I do wish to participate. Please purchase _____ hours.
of hours

I do NOT wish to participate.

PRINT LEGAL NAME LEGIBLY

LAST 4 OF SSN

ORIGINAL HANDWRITTEN SIGNATURE

DATE

FOR HR/PAYROLL USE ONLY

SPAHRS AGENCY: _____

BALANCE SUFFICIENT: YES NO

ENTERED BY: _____

MODIFIED AMOUNT: _____

169 corrective salary adjustments be made to the compensation of
170 employees of the Department of Public Safety where an inequity was
171 created between employees of equivalent capacity by previous
172 application of the agency appropriation acts. Any such corrective
173 salary adjustment plan must have prior approval by the State
174 Personnel Board. Such adjustments will not be retroactive.

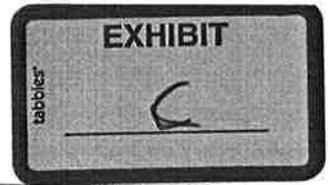
175 Any funds in the Salary, Wages and Fringe Benefits major
176 object of expenditure may be used to purchase accumulated
177 compensatory time within funds available.

178 **SECTION 5.** It is the intent of the Legislature that the
179 local governments pay for part of the computer cost of the
180 Mississippi Justice Information Center by maintaining their
181 contribution to the Department of Public Safety.

182 **SECTION 6.** It is the intention of the Legislature that the
183 Department of Public Safety designate certain employees to aid the
184 Office of Forensics Laboratories in the billing and collecting of
185 all fees charged for services rendered by the Office of Forensics
186 Laboratories.

187 **SECTION 7.** No part of the funds appropriated herein shall be
188 transferred to, expended by, or used, directly or indirectly, for
189 the benefit of any public relations, publicity or publication
190 activities of any other state agency, department or officer, nor
191 shall any personnel paid with funds appropriated herein be
192 transferred or assigned to any other state agency, department or





See attached

[Handwritten Signature]
Signature

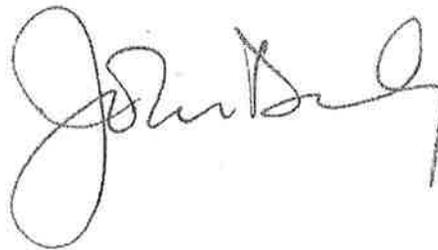
7-31-19
Date

Fringe Benefits:

MS Bureau agrees to all the findings during the audit of fringe benefits. Below it is detailed out the changes which have been changed in order to stay in compliance with MAAPP Manual.

Once being made aware of the Federal Regulation regarding fringe benefits of civilians driving a take home vehicle, MBN Deputy Director sent an email out on June 28, 2019 removing 4 out of 5 civilians in question from state issued vehicles effective July 1, 2019.

The fifth employee is not a civilian employee. The Executive Director is a sworn Agent of the MBN having been sworn to such position by the authority granted to the Commissioner of Public Safety pursuant to M.C.A. §41-29-107(1). Additionally, the Commissioner of Public Safety specifically authorized the Executive Director to be provided with a law enforcement vehicle because of the fact that, not only is the Executive Director a sworn Agent of the MBN, the Executive Director is on-call 24 hours a day; 7 days a week for any type of critical incident response or narcotic operation.

A handwritten signature in black ink, appearing to read "John B. [unclear]". The signature is written in a cursive style with a large initial "J" and a long, sweeping tail.



STATE OF MISSISSIPPI
DEPARTMENT OF PUBLIC SAFETY
MISSISSIPPI BUREAU OF NARCOTICS

MARSHALL FISHER
COMMISSIONER

PHIL BRYANT
GOVERNOR

JOHN M. DOWDY, JR.
DIRECTOR

June 28, 2019

All MBN

Re: Take Home Vehicle Policy Effective July 1, 2019

Based on feedback provided by the State Auditor's Office in their review of MBN's fleet records and Fuelman usage the following policies, while always having been the rule, will be enforced and implemented effective July 1, 2019.

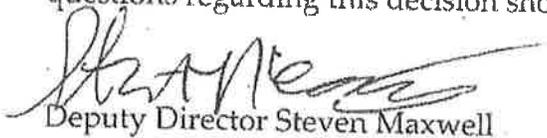
Agent Vehicles

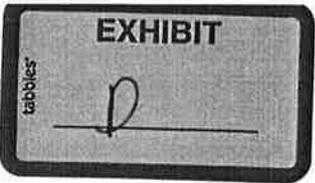
Sworn law enforcement agents are allowed to commute to and from their official residence to work, but shall not use their state-issued vehicle for any personal reason. Further, unauthorized persons who are not participating in state business shall not ride in a state-issued vehicle for any reason.

Civilian Vehicles

Civilians will not be allowed to take home a state-issued vehicle. All vehicles issued for commuting must be turned in on July 1, 2019.

This decision was made by the Administration based on the Auditor's findings. Any questions regarding this decision should be forwarded to me not Dallas Albritton.


Deputy Director Steven Maxwell



Management's Response:

See attached

[Handwritten Signature]

Signature

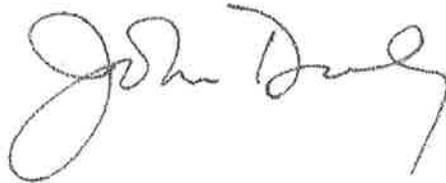
7-31-19

Date

Travel:

MS Bureau agrees to all the findings during the audit of travel. Below it is detailed out the changes which have been changed in order to stay in compliance with DFA rules and regulation.

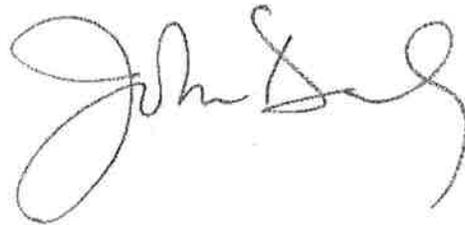
1. After review, these two payments were made which included taxes. Going forward, CFO will review each bill to verify that no taxes will be paid on any direct billed hotel stays.
2. After further review, MBN did receive a voucher but admits to misplacing this particular voucher and still currently looking to locate. No travel is paid unless a state regulated travel voucher is provided.

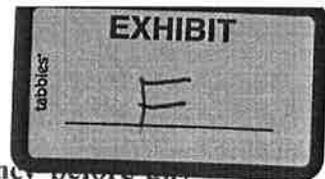
A handwritten signature in black ink, appearing to read "John Dwyer". The signature is written in a cursive style with a large, looping initial "J".

Bank Accounts

MS Bureau agrees to all the findings during the audit of bank accounts. Below it is detailed out the changes which have been changed in order to stay in compliance with internal controls and MAAP Manual.

1. In regard to the check number 2355 and 2366, MBN will be adding the Deputy Director to the bank account. This allows for 3 signors to be on the account. Going forward there will always be someone available to sign off on the checks to maintain separation of duties.
2. MBN will submit and update form 29.60.35 maximum amount for this bank account which is used for State Seized Funds holding account.
3. This was an isolated event. The agency is very aware that there needs to be two signors on all checks for this account.
4. MBN is adopting the attached spreadsheet to be included in the monthly reconciliation of all bank accounts for the agency in order to comply Internal Controls.
5. MBN has addressed that the stated accounts compare the account book transaction balance to the bank statement ending balancing in order to keep a better record of what has been processed during each monthly statement.
6. For the past few years, MBN's fiscal office has been understaffed. MBN is currently working to hire personnel to become full staff in order to provide full segregation of duties with bank accounts.

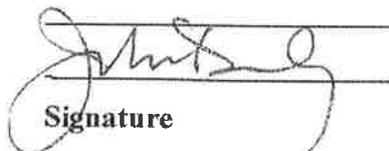




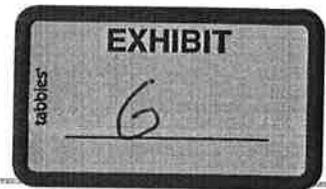
Whenever issues are noted, we are required to discuss them with the agency before any further work is completed. Please provide a written response to the above listed issue by Monday, July 22, 2019. Please sign and date this form upon completion of your response. If you prefer to complete your response on a separate sheet of paper, please feel free. However, a signature and date will be required on that sheet as well. If you have any questions, please contact Jeremy Ashley, at Jeremy.Ashley@osa.ms.gov or Kristi Goodson, at Kristi.Goodson@osa.ms.gov.

Management's Response:

See attached


Signature

7-31-19
Date



THOMSON REUTERS

WESTLAW Mississippi Attorney General Opinions

Mr. Ernest D. Strange, Jr.

Office of the Attorney General
September 13, 2002

2002 WL 31663387 (Miss.A.G.)

Office of the Attorney General

State of Mississippi

*1

Opinion No. 2002-0372

*1 September 13, 2002

Re: Limitation of Reportable Compensation for Retirement Purposes

1 Mr. Ernest D. Strange, Jr.
1 Director
1 Mississippi Bureau of Narcotics
1 Post Office Box 7459
1 Jackson, Mississippi 39282-7459

Dear Mr. Strange:

1 Attorney General Mike Moore has received your request for an official opinion from this office and has assigned it to me for research and reply. Due to the length of your letter, we have enclosed a copy thereof for reference. Your letter presents the following facts.

1 The Mississippi Bureau of Narcotics [(“ **MBN** ”)] operates under several federal funding programs, all of which are provided through the U.S. Department of Justice....The funding provided to **MBN** through these programs is, generally speaking, earmarked for a specific usage. However, a common thread is that each provides for federally funded overtime pay for state and local law enforcement assigned to projects funded under the programs.

1 In conformity with the statutes establishing the retirement system, particularly Miss. Code Ann. Section 25-11-103(k), the Agency reported the entirety of Agents' income, including overtime and purchased **compensatory** time. In other words, contributions were paid into PERS [Public Employees' Retirement System] by **MBN** and, through withholding, by the employees, based on all of their earnings, including **compensatory** time purchases.

1 Recently, two **MBN** employees announced their intention to retire from **MBN**. Each employee had received federally funded overtime... and **compensatory** time purchases by the Agency using federally forfeited funds. Each employee had, because of the overtime pay, **compensatory** time purchases and because of the seniority of service and position, earned more than the salary set forth in Miss. Code Ann. Section 25-3-33 for **MBN's** Director during several years. Representatives of PERS informed the two retiring Agents that their retirement benefits will be calculated in a manner that caps their highest four years salary at that of **MBN's** Director.

1 Your letter poses the following questions to which we respond in sequence:

1 1. Does the ceiling imposed by Section 25-3-39(2) apply only to employees' base salary rather than to aggregate compensation that includes federally provided overtime and FLSA purchased time?

1 In response, Section 25-3-39(2), MISS. CODE ANN. (1972, as amended), prescribes, in pertinent part, as follows:

1 No public officer, employee or administrator shall be paid a salary or compensation, *directly or indirectly*, in excess of the salary of the executive head of the state agency or department in which he is employed. [Emphasis added.]

1 Compensation or “earned compensation” means the full amount earned by an employee for a given pay period including any maintenance withheld. Section 25-11-103(k), MISS. CODE ANN. (1972, as amended). This includes compensation paid as “overtime”. Thus the ceiling imposed by Section 25-3-39(2) applies to employees' full or “aggregate” compensation.

1 2. If the ceiling applies to aggregate compensation, does the limitation prohibit Agents from receiving overtime pay and/or **compensatory** time buy outs, if such would exceed the **MBN** Director's salary or the Commissioner's salary? In other words, which salary sets the ceiling?

1 This question has been answered by the enclosed opinion, MS AG Op., Ready (July 26, 2002), which states that the executive head of the Bureau of Narcotics is the Director of the Bureau.

1 3. Does the salary ceiling of Section 25-3-39(2) have any application to the calculation of retirement benefits?

'2 Yes. Again, please see the enclosed opinion in which we stated that an employee should not be authorized to work overtime to the extent that compensation exceeds that of the agency head. Further, it was the opinion of this office that PERS would have a responsibility to inquire regarding contributions received which it believes are for a salary which is over and above that permitted by law.

'2 Since the submission of the original request, you have supplemented your inquiry with additional information.

'2 One of the two individuals in question, William Taylor, was a member of the Mississippi Highway Safety Patrol. [{"MHSP"}] Mr. Taylor had been assigned to the **MBN** for many years. Presently, **MBN** has twenty-five (25) Highway Patrol troopers assigned full-time to the Bureau. For payroll purposes, the retirement contributions of these individuals is withheld at a higher rate than other **MBN** certified law enforcement officers and is consistent with troopers assigned to the MHSP. These assignments of MHSP officers to **MBN** are provided for by statute.

'2 As explained in more detail in the [original] request, **MBN** agents work protracted investigations and this causes the incurrence of overtime.... Although members of the MHSP comprise part of the ranks of **MBN's** agents, not all agents are members of the Patrol. In these situations, provision of overtime pay, either through one of the several federal grant programs, or through payment for accumulated **compensatory** time as federally forfeited funds become available, could cause an agent's pay in a given year to exceed the **MBN** Director's salary.

'2 Based on this information, you have posed two additional questions:

'2 4. Are **MBN** certified law enforcement officers who are members of the Mississippi Highway Safety Patrol subject to the Section 25-3-9(2) salary cap established by the salary of the **MBN** Director or the Commissioner of Public Safety?

'2 The creation of the Bureau of Narcotics was authorized by Section 41-29-107, MISS. CODE ANN. (1972, as amended) which states, in pertinent part:

'2 The commissioner of public safety may assign members of the Mississippi Highway Safety Patrol, regardless of age, to the bureau at the request of the director of the bureau; however, when any highway patrolman or other employee, agent or official of the Mississippi Department of Public Safety is assigned to duty with, or is employed by, the bureau, he shall not be subject to assignment or transfer to any other bureau or department within the Mississippi Department of Public Safety except by the director. *Any highway patrolman assigned to duty with the bureau shall retain his status as a highway patrolman*, but shall be under the supervision of the director. For purposes of seniority within the highway safety patrol and for purposes of retirement under the Mississippi Highway Safety Patrol Retirement System, highway patrolmen assigned to the bureau will be credited as if performing duty with the highway safety patrol. [Emphasis added.]

'3 Giving the language of Section 41-29-107 its plain meaning, it is the opinion of this office that a highway patrol officer assigned to duty with the **MBN** retains his or her status as a highway patrol officer for all purposes. Therefore, the executive head of the state agency or department in which the officer is employed is the Commissioner of Public Safety. The cap imposed by Section 25-3-39(2) would, for these highway patrol officers, apply to the Commissioner's salary.

'5. It is my understanding that the agent's salary for retirement calculation purposes would be capped by Section 25-3-39(2). But could overtime pay exceeding this amount be provided to agents with retirement contributions only being made to the point of the cap?

' No. Please see our response to your third inquiry and the enclosed opinion.

' If we may be of further service to you, let us know.
Very truly yours,

' Mike Moore
' Attorney General
' Charlene R. Pierce
' Special Assistant Attorney General

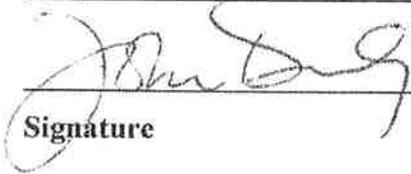
2002 WL 31663387 (Miss.A.G.)



Whenever issues are noted, we are required to discuss them with the agency before any further work is completed. Please provide a written response to the above listed issue by Wednesday, July 17, 2019. Please sign and date this form upon completion of your response. If you prefer to complete your response on a separate sheet of paper, please feel free. However, a signature and date will be required on that sheet as well. If you have any questions, please contact Jeremy Ashley, at Jeremy.Ashley@osa.ms.gov or Vincent Steiner, at Vincent.Steiner@osa.ms.gov.

Management's Response:

After review of the listed fuel purchases, MBN agrees to the findings of the commodities area. During review MBN notices the main employees who purchased this higher octane fuel, no longer work for MBN. As of today, MBN has sent out the attached memo to all of MBN to make aware and prohibit the use of any purchase of higher octane fuel


Signature

8-2-19
Date



Mississippi Bureau of Narcotics

Post Office Box 720519
Byram, Mississippi 39272-0519



MEMORANDUM

To: All MBN

From: Steven Maxwell
Deputy Director

Date: August 2, 2019

Subject: Fuel Purchase

Good Afternoon,

Effective Friday, August 2, 2019, any fuel purchases of gasoline above the Regular Grade utilizing Fuelman will be reimbursed by the purchasing employee. Fuel purchases of gasoline above the Regular Grade are prohibited per the Travel and Fleet Management's Fleet Manual, Section 6.102. The Travel and Fleet Management's Fleet Manual, Section 6.102 requires fuel purchases to include only unleaded and diesel fuels, excluding higher-octane fuels (unleaded plus and premium).

Employees should be mindful that at times Station pumps are temporarily out of order. Therefore, refueling prior to being just at empty is important to avoid having to drive for an extended distance to a Station where there is no issue with their Regular Grade pumps. Pumps being out order at a Station will not be an excuse for purchasing prohibited fuel grades.

Thank you for your assistance as we strive for greater fiscal responsibility and accountability!

Have a productive and Safe Day.....

Personal, Medical, and Comp Leave:

MS Bureau does not agree and disputes, in part, the findings during the audit of personal, medical, and Comp Leave. Below it is detailed out the changes which have been changed in order to stay in compliance with MBN's General Orders.

1. In the instance of Cecily Kumor's timesheets not matching what was reported in SPAHRS, the agency is very aware of somethings that were in accurate regarding inputting time in SPAHRS and multiple other things. Due to this, MBN had to remove the HR employee who was over this department. MBN currently has procedures in place to verify timesheets are entered correctly and also ask that each employee verify their time on a monthly basis by logging into ACE.
2. MBN researched into why these 28-day timesheets were not signed before being submitted to Human Resources. The HR employee at the time received the timesheets but never requested that the immediate supervisor sign the timesheets. This also is another reason why MBN chose to remove the HR employee who was over this department. With the new procedures currently in place, no time will be entered into SPAHRS unless the immediate supervisor has signed off on the timesheets.
3. Audit questions the accumulation of Compensatory Time accrued and paid to the Executive Director. First, Audit indicates that the Executive Director accumulated 529 hours of Compensatory time but does not give specificity for the time period covered by such accumulation precluding any specific response. There is no question that the Executive Director accumulated Compensatory Time since October, 2016. The vast majority of the Compensatory Time was accumulated due to the Executive Director carrying out the mandates expressly given by the Governor of the State of Mississippi to address the opioid crisis existing in Mississippi, such as working weekends and nights attending official events and speaking engagements across the state. These engagements were specifically authorized by the Commissioner of Public Safety. Second, payments of Compensatory Time were authorized by the Mississippi Legislature in each of the years in question. See Attachment A. Moreover, the payment of Compensatory Time was directed and authorized by the Commissioner of Public Safety pursuant to the authority granted by the Mississippi Legislature. As for the payment of Compensatory Time by the DCE/SP Grant, the Executive Director is a sworn Agent of the MBN and as such was entitled to payment of overtime work done with the DCE/SP Program. The authority cited by Audit regarding payment of Compensatory Time (Attorney General Opinion 1996 WL 50176 (1996)) is inapplicable to the facts regarding the payment of Compensatory Time to the Executive Director. In its findings, Audit attempts to use the aforementioned Attorney General Opinion to say that an employee "is not entitled to receive a lump sum payment for any unused compensatory time." The Attorney General Opinion relied on by Audit dealt with an Executive Director that was leaving state service and the Opinion addressed how to treat

ATTACHMENT A

369 Any funds in the Salary, Wages and Fringe Benefits major
370 object of expenditure may be used to purchase accumulated
371 compensatory time within funds available.

372 **SECTION 5.** It is the intent of the Legislature that the
373 local governments pay for part of the computer cost of the
374 Mississippi Justice Information Center by maintaining their
375 contribution to the Department of Public Safety.

376 **SECTION 6.** It is the intention of the Legislature that the
377 Department of Public Safety designate certain employees to aid the
378 Division of Crime Laboratories in the billing and collecting of
379 all fees charged for services rendered by the Division of Crime
380 Laboratories.

381 **SECTION 7.** No part of the funds appropriated herein shall be
382 transferred to, expended by, or used, directly or indirectly, for
383 the benefit of any public relations, publicity or publication
384 activities of any other state agency, department or officer, nor
385 shall any personnel paid with funds appropriated herein be
386 transferred or assigned to any other state agency, department or
387 officer for public relations, publicity, or publication activities
388 of such office.

389 **SECTION 8.** It is the intention of the Legislature that the
390 Department of Public Safety shall not issue citations for
391 violations of speed limits on a quota basis. No funds expended
392 under this act shall be used for such quota-based citations for
393 violations of speed limits.

