

COMPLIANCE AND CONTROL AUDIT REPORT

EMPORIA STATE UNIVERSITY
Fiscal Year 1993

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
April 1994**

Legislative Post Audit Committee

Legislative Division of Post Audit

The Legislative Post Audit Committee and its audit agency, the Legislative Division of Post Audit, are the audit arm of Kansas government. The programs and activities of State government now cost about \$6 billion a year. As legislators and administrators try increasingly to allocate tax dollars effectively and make government work more efficiently, they need information to evaluate the work of government agencies. The audit work performed by Legislative Post Audit helps provide that information.

We conduct our audit work in accordance with applicable government auditing standards set forth by the U. S. General Accounting Office. These standards pertain to the auditor's professional qualifications, the quality of the audit work, and the characteristics of professional and meaningful reports. These audit standards have been endorsed by the American Institute of Certified Public Accountants and adopted by the Legislative Post Audit Committee.

The Legislative Post Audit Committee is a bipartisan committee comprising five senators and five representatives. Of the Senate members, three are appointed by the President of the Senate and two are appointed by the Senate Minority Leader. Of the representatives, three are appointed by the Speaker of the House and two are appointed by the House Minority Leader.

As part of its audit responsibilities, the Division is charged with meeting the requirements of the Legislative Post Audit Act which address audits of financial matters. Those requirements call for two major types of audit work.

First, the Act requires an annual audit of the State's financial statements. Those statements, prepared by the Department of Administration's Division of Accounts and Reports, are audited by a certified public accounting firm under contract with the Legislative Division of Post Audit. The firm is selected by the Contract Audit Committee, which comprises three

members of the Legislative Post Audit Committee (including the Chairman and Vice-Chairman), the Secretary of Administration, and the Legislative Post Auditor. This audit work also meets the State's audit responsibilities under the federal Single Audit Act of 1984.

Second, the Act provides for a regular audit presence in every State agency by requiring that audit work be conducted at each agency at least once every three years. Audit work done in addition to the annual financial statement audit focuses on compliance with legal and procedural requirements and on the adequacy of the audited agency's internal control procedures in areas not covered by the annual audit. These compliance and control audits are conducted by the Division's staff under the direction of the Legislative Post Audit Committee.

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LEGISLATIVE DIVISION OF POST AUDIT

800 SW Jackson
Suite 1200
Topeka, Kansas 66612-2212
Telephone (913) 296-3792
FAX (913) 296-4482

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COMPLIANCE AND CONTROL AUDIT REPORT

EMPORIA STATE UNIVERSITY

Fiscal Year 1993

OBTAINING AUDIT INFORMATION

This audit was conducted by Randy Tongier, Financial-Compliance Audit Manager, and Tom Vittitow, Auditor, of the Division's staff. If you need any additional information about the audit's findings, please contact Mr. Tongier at the Division's offices.

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EMPORIA STATE UNIVERSITY

Summary of Legislative Post Audit's Findings

Legislative Post Audit conducted compliance and control audit work at Emporia State University in partial fulfillment of the Legislative Post Audit Act's requirement that audit work be conducted at each State agency at least once every three years. This compliance and control audit addressed the areas of revenues, locally administered funds, and central services. The period covered by this audit was fiscal year 1993.

Did Emporia State University adequately manage its revenues and comply with applicable State requirements? With some exceptions, the University adequately managed its revenues and complied with State requirements. The University waived tuition charges for National Guard students enrolled in its Reserve Officer Training Corps program after the statutory authority for that waiver had expired. We estimate that the University waived about \$140,000 in fees that it did not have authority to waive. If the experience of the other State universities in this area has been similar to that of Emporia State University, the total amount of tuition charges waived without legislative authority may have been as much as \$840,000. In addition, contrary to statutory directives, the university did not charge all students the same dormitory fees for the same type of living quarters and meals.

Did Emporia State University adequately manage its locally administered funds and comply with applicable State requirements? With one exception, the University managed its locally administered funds adequately and complied with applicable State requirements. The University did not submit required imprest fund reports to the Division of Accounts and Reports. However, we found that the Division of Accounts and Reports probably would not have used these reports.

Did Emporia State University provide central services in accordance with applicable State requirements? The University provided central services only to authorized users. In addition, during the most recent five fiscal years, the University's central service clearing fund collected enough revenues to cover its costs.

In the area of revenues, the report recommends that Emporia State University stop waiving tuition charges for National Guard students in its Reserve Officer Training Corps program, and work with the Board of Regents to ensure it complies with State laws requiring universities to charge uniform dormitory fees. The report also recommends that the Board of Regents require all State universities to stop waiving tuition for the National Guard students, and report to the Legislative Post Audit Committee the amount of fees waived without statutory authority and the steps the Board has taken to ensure that no tuition charges are waived without proper authority. In addition, the report recommends that if the University or the Board thinks the waiver should be reinstated, they should seek specific statutory authority to reinstate it.

In the area of locally administered funds, the report recommends that the Division of Accounts and Reports consider dropping its requirement that State agencies submit semiannual bank certifications for their locally administered funds. If the Division drops the requirement, it should notify State agencies of its decision.

We would be happy to discuss these recommendations or any other items in the report with legislative committees, individual legislators, or other State officials.


Barbara J. Hinton
Legislative Post Auditor

EMPORIA STATE UNIVERSITY

The Legislative Post Audit Act requires that audit work be conducted at each State agency at least once every three years. In partial fulfillment of that requirement, the Legislative Division of Post Audit has conducted compliance and control audit work at Emporia State University covering fiscal year 1993.

Compliance and control audits identify noncompliance with applicable requirements and poor financial management practices. Although the resulting audit findings usually do not result in significant program improvements or cost savings, they often identify needed improvements that can help minimize the risk of potential future loss or misuse of State resources.

To avoid duplication of audit work conducted as part of the statutorily required audit of the State's financial statements, our audit work generally focused on areas not covered by that audit. These areas included revenues, locally administered funds, and central services. This audit addresses the following specific questions:

- 1. Did Emporia State University adequately manage its revenues and comply with applicable State requirements?**
- 2. Did Emporia State University adequately manage its locally administered funds and comply with applicable State requirements?**
- 3. Did Emporia State University provide central services in accordance with applicable State requirements?**

To answer these questions, we identified applicable State requirements by reviewing relevant statutes, administrative regulations, and sections of the Division of Accounts and Reports' Policy and Procedure Manual. We also interviewed agency personnel, reviewed written procedures, and examined related documents to identify the agency's procedures. We then compared those procedures with the applicable requirements. In addition, we assessed the potential for loss or misuse, and the level of control provided by the University's procedures in preventing and detecting loss or misuse. Finally, we reviewed accounting records and tested a sample of transactions.

In conducting this audit work, we followed all applicable generally accepted government auditing standards set forth by the U. S. General Accounting Office.

In general, we found that Emporia State University adequately managed its revenues and locally administered funds, and complied with applicable State requirements, with a few exceptions. In the area of revenues, the University waived tuition charges for National Guard students enrolled in its Reserve Officer Training Corps program after the statutory authority for that waiver had expired. We estimate that the University waived about \$140,000 in fees that it did not have authority to waive. If the experience of the other State universities in this area has been similar to that of

Emporia State University, the total amount of tuition charges waived without legislative authority may have been as much as \$840,000. In addition, contrary to statutory directives, the University did not charge all students the same dormitory fees for the same type of living quarters and meals.

In the area of locally administered funds, the University did not submit required imprest fund reports to the Division of Accounts and Reports. However, we found that the Division of Accounts and Reports probably would not have used these reports. Further, the information that would have been reported had already been reported to the State Treasurer's Office, which did use that information. Our review of central services found that the University provided those services only to authorized users, and collected fees sufficient to cover costs.

These findings are described following a background section on Emporia State University.

Background on Emporia State University

Emporia State University was originally established in 1863 as the Kansas Normal School. Once known as the Kansas State Teachers College at Emporia, the University received its present name by act of the 1977 Legislature.

The University's instruction program focuses primarily in the areas of arts and sciences, business, education, and library and information management. The University offers both undergraduate and graduate degrees, including the doctorate in library and information management.

According to the Governor's Budget, during fiscal year 1993 the University spent \$42.8 million, including \$27.7 million for salaries and wages. The Governor's Budget reported that the University had about 680 full-time employee positions in fiscal year 1993.

Did Emporia State University Adequately Manage Its Revenues and Comply With Applicable State Requirements?

For fiscal year 1993, we concluded that, with two exceptions, Emporia State University adequately managed its revenues and complied with applicable State requirements. The University waived tuition charges for National Guard students enrolled in its Reserve Officer Training Corps program after the statutory authority for that waiver had expired. We estimate that the University waived about \$140,000 in fees that it did not have authority to waive. If the experience of the other State universities in this area has been similar to that of Emporia State University, the total amount of tuition charges waived without legislative authority may have been as much as \$840,000. In addition, contrary to statutory directives, the University did not charge the same dormitory fees for like services. The basis for our conclusions is discussed in the following sections.

University Procedures Should Ensure Collection and Deposit of All the Money Due And Compliance With Applicable Requirements

A State agency's primary objective in managing its revenues is to ensure that it collects and deposits all the money it should. To ensure that the proper amounts of money are collected and deposited, Emporia State University should follow a number of basic procedures. These procedures would not only ensure that the University collects and deposits all the money it should, but would also help prevent loss or misuse. The following list includes the basic procedures necessary:

- ◇ The University should establish a system of recordkeeping and reporting, including reconciliations with other State records, that will ensure that amounts due are collected and deposited.
- ◇ The University should ensure that receipts are collected and deposited promptly.
- ◇ The University should put the above policies and procedures in writing to increase the likelihood that employees will follow them.

A State agency also must comply with State requirements applicable to revenues. The following list includes the basic State requirements applicable to the University's revenues.

- ◇ The University should collect fees as authorized by the Board of Regents.
- ◇ The University's local bank for handling revenues should be designated by the Pooled Money Investment Board.

- ◇ The University should use these local bank accounts only for deposit and transfer of receipts to the State Treasury and refunds.
- ◇ The University should deposit and transfer receipts on a timely basis.

Our Review and Evaluation of the University's Revenue Procedures Found No Problems

We reviewed and evaluated the University's procedures for managing its revenues. In particular, we focused on the general Business Office procedures that apply to collection and deposit of all University revenues, and on the specific procedures that apply to collection of the two major types of revenues we actually tested—enrollment fees and dormitory fees. Based on our review, we concluded that the University's revenue procedures are adequate to ensure that proper revenues are collected and deposited in the proper funds on a timely basis.

Our Tests of the University's Procedures, Records, and Reports Found That the University Waived Tuition Charges Without the Authority To Do So, And Charged Different Dormitory Fees for Like Services

We tested samples of revenue transactions, including collections of amounts due, deposits in the University's local bank account, and deposits in the State Treasury. In testing these transactions, we determined that the University collected the correct amounts, that these receipts were properly recorded, that they were deposited on a timely basis, and that transfers to the State Treasury were made in the proper amount and on a timely basis. Our tests of specific revenues focused on enrollment fees and dormitory fees, which account for about 73 percent of the University's revenues other than transfers among University departments and federal grant moneys. (Federal grant moneys are covered by the annual Statewide audit conducted by a certified public accounting firm under contract with Legislative Post Audit.)

The University waived tuition charges for National Guard students enrolled in its Reserve Officer Training Corps program without the authority to do so. K.S.A. 74-3255 *et seq.* authorized the Board of Regents to waive tuition charges for Kansas National Guard students in each of the Board's institutions' Reserve Officer Training Corps programs. However, the statutes authorizing that waiver expired July 1, 1991.

In spite of that expiration, Emporia State University has continued to waive tuition charges for National Guard students in its Reserve Officer Training Corps program for the 1991-92, 1992-93, and 1993-94 school years. We estimate that the total amount of fees waived by the University under this program, after the authority had expired, was as much as \$140,000.

We contacted the Board of Regents, and found that the Board's staff was not aware that the statutory authorization for the tuition waiver had expired. Based on this information, we concluded it was likely other State universities also have been waiving tuition charges without statutory authority. If the experience of those universities was similar to that of Emporia State University, the total amount of tuition charges waived by the State universities without legislative authority may have been as much as \$840,000.

The University had not assessed uniform fees from dormitory residents. State law (K.S.A. 76-6a05) requires that university dormitory rentals and boarding fees be uniform for like services, accommodations, and meals in a given dormitory. To help ensure compliance with this requirement, the Board of Regents reviews and approves dormitory fee schedules.

In testing dormitory fees, we found that Emporia State University has established an incentive to encourage students to reside in its dormitories. That incentive provides a reduced fee for students who previously have resided in a University dormitory. The reduction ranges from \$125 to \$500 a year, depending on the circumstances. This type of reductions in fees does not seem to be in accordance with the requirements of State law.

Recommendations

1. To comply with State requirements for the management of its revenues, Emporia State University should do the following.
 - a. Stop waiving tuition charges for National Guard students in its Reserve Officer Training Corps program.
 - b. Work with the Board of Regents to ensure it complies with State laws requiring universities to charge uniform dormitory fees.
2. To ensure that the State universities are not waiving tuition charges without the statutory authority to do so, the Board of Regents should do the following.
 - a. Inform the State universities that the statutory authority for waiving tuition charges for National Guard students in the Reserve Officer Training Corps program expired July 1, 1991, and require the universities to stop waiving tuition for these students.

- b. Report to the Legislative Post Audit Committee the amount of fees waived without statutory authority and the steps the Board has taken to ensure that no tuition charges are waived without proper authority.
3. If the University or the Board of Regents thinks this waiver should be reinstated, they should seek specific statutory authority to reinstate it.

Did Emporia State University Adequately Manage Its Locally Administered Funds and Comply With Applicable State Requirements?

For fiscal year 1993, we concluded that, with one exception, Emporia State University adequately managed its locally administered funds and complied with applicable State requirements. The University did not submit required imprest fund reports to the Division of Accounts and Reports. However, we found that the Division of Accounts and Reports probably would not have used these reports, and that the information that would have been reported duplicates information already provided to the State Treasurer's Office. The basis for our conclusions is discussed in the following sections.

University Procedures Should Control The Risk of Loss or Misuse and Ensure Compliance With Applicable Requirements

Locally administered funds are moneys the University primarily keeps in local bank accounts rather than in the State Treasury. These moneys are spent by writing checks on the local bank account rather than by issuing State warrants. The University's locally administered funds comprise its imprest fund, including related petty cash and change funds, and its organizational safekeeping account.

The imprest fund is used to make small payments that need to be paid faster than they could be paid by using the normal State payment procedures. The University periodically reimburses this fund from its other funds.

In general, the organizational safekeeping account is used for moneys that belong to student organizations. The University administers this account on behalf of those organizations.

A State agency's primary objectives in managing its locally administered funds are to make sure that these moneys are used only for authorized purposes and to protect these moneys from loss or misuse. To accomplish these objectives, the University should follow a number of basic procedures:

- ◇ The University should establish a system of recordkeeping, reconciling, and reporting, including reconciliations with other State records, that will ensure that locally administered fund are properly accounted for.
- ◇ The University should provide adequate security for any moneys on hand.
- ◇ The University should provide for a system of approvals and authorizations to ensure that moneys are used only for proper purposes.

- ◇ The University should ensure that advances from the imprest fund are reimbursed on a timely basis.
- ◇ The University should put the above policies and procedures in writing to increase the likelihood that employees will follow them.

A State agency also must comply with State requirements applicable to locally administered funds. The following list includes the basic State requirements applicable to the University's locally administered funds.

- ◇ The individual funds should be properly established.
- ◇ The local banks for handling locally administered funds should be designated by the Pooled Money Investment Board.
- ◇ The University should use the funds only for the purposes authorized.
- ◇ The University should adhere to any limitations placed on the nature and amount of payments from these funds.
- ◇ The University should adhere to the recordkeeping and reporting requirements of the Division of Accounts and Reports.

Our Review and Evaluation of the University's Basic Procedures for Locally Administered Funds Disclosed No Problems

We reviewed and evaluated the University's basic procedures for managing its locally administered funds. In particular, we focused on the general Business Office procedures that apply to these funds, as well as the specific procedures that apply to the individual funds we actually tested—the imprest fund and the organizational safekeeping account.

Based on our review, we concluded that the University's established procedures generally are adequate to ensure proper accountability of the funds and to minimize the risk of loss or misuse

The University Did Not Submit Required Reports to the Division of Accounts and Reports, But the Division Probably Would Not Have Used Them, and the Same Information Already Had Been Reported to the State Treasurer's Office

In testing the University's records and reports for its locally administered funds, we found that the University had not submitted semiannual bank certifications

to the Division of Accounts and Reports for its imprest fund. These reports, required by the Division's Policy and Procedures Manual, show the imprest fund's bank balance, and list any investments pledged by the bank as security for the State moneys in the imprest fund bank account.

According to a representative of the Division of Accounts and Reports, the Division does not take any action based on these reports, nor does it follow up to ensure that these reports are received. Based on this information, it appears that the Division of Accounts and Reports may not need to require State agencies to submit semiannual bank certifications for their imprest funds, or for any of their locally administered funds.

Recommendations

1. To eliminate unnecessary reporting by State agencies, the Division of Accounts and Reports should consider dropping its requirement that agencies submit semiannual bank certifications for their locally administered funds.
2. If the Division of Accounts and Reports decides to drop this requirement, the Division should notify State agencies of this decision.

Did Emporia State University Provide Central Services In Accordance With Applicable State Requirements?

During fiscal year 1993, Emporia State University provided central services only to authorized users. In addition, for the period covering fiscal years 1989 through 1993, the central service clearing fund collected enough revenues to cover its costs. These findings are described in more detail below.

The State Requires That University Central Services Be Provided Only to Authorized Users, and That the Services Collect Enough Revenue to Cover Their Costs

State law (K.S.A. 76-755) specifies that the University's internal services, such as telecommunications and printing, should be provided only to its own departments, other University-related organizations such as the Student Union Corporation, and specific organizations and individuals approved by the Board of Regents. In addition, that law calls for the University's services taken together to be self-supporting, which means that they collect enough revenues to cover their costs.

The University provided internal services only to authorized users. We focused our review on two providers of internal services—telecommunications and printing. For each of those services, we reviewed all users for one test month. In addition, we reviewed the Telecommunications Department's current customer list. We identified no unauthorized users.

During fiscal years 1989 through 1993, the University's central services collected sufficient revenues to cover costs. Using the University's annual financial reports, we compared total revenues and costs for those central services still in operation during fiscal year 1993. We identified total revenues of \$7.1 million and total costs of \$7.0 million.

Appendix A

Agency Response

On March 21, we provided copies of the draft audit report to Emporia State University, the Board of Regents, and the Department of Administration's Division of Accounts and Reports. Their responses are included as this appendix.



EMPORIA STATE UNIVERSITY

1200 COMMERCIAL EMPORIA, KANSAS 66801-5087 316/341-1200

April 5, 1994

Ms. Barbara Hinton
Legislative Post Auditor
Merchants Bank Tower
800 S.W. Jackson, Suite 1200
Topeka, KS 66612-1200



Dear Ms. Hinton:

I am writing to respond to the draft copy of your compliance and control audit report on Emporia State University for fiscal year 1993. Other than the following responses to your findings, we have no comments or clarifications to make at this time.

- | | |
|----------|--|
| Finding | The University waived tuition charges for National Guard students enrolled in its Reserve Officer Training Corps program without the authority to do so. |
| Response | The University concurs with the letter to Barbara Hinton, dated April 1, 1994, from Stephen M. Jordan, Regents Executive Director, in which he indicates that K.S.A. 76-719 gives the Board authority for establishing tuition and fee waivers. We also encourage the extension of K.S.A. 74-3255 et. seq. in the next legislative session (see attachment). |
| Finding | The University had not assessed uniform fees for dormitory residents. |
| Response | The University concurs with Stephen M. Jordan's letter of April 1, 1994 to Barbara Hinton in which he indicates that, in the opinion of our General Counsel, the University's Pay-Les program complies with the requirements of K.S.A. 76-6a05 (see attachment). |
| Finding | The University did not submit required reports to the Division of Accounts and Reports, but the Division probably would not have used them, and the same information already had been reported to the State Treasurer's Office. |
| Response | We concur with the recommendation of Legislative Post Audit that Accounts and Reports drop its semiannual bank certification reporting requirement. If Accounts and Reports does not drop the above reporting requirement, we will have the bank submit the reports as required. |

Ms. Barbara Hinton
April 5, 1994
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If you have any questions regarding our responses, please feel free to call me at (316) 341-5551.
We appreciate the opportunity for review and comment.

Sincerely,

A handwritten signature in black ink, appearing to read "R. E. Glennen". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Robert E. Glennen
President

cw

enclosure



KANSAS BOARD OF REGENTS

700 SW HARRISON • SUITE 1410 • TOPEKA, KS 66603-3760

GENERAL ADMINISTRATION - 913 296-3421 • STUDENT ASSISTANCE - 913 296-3517 • FAX 913 296-0983

April 1, 1994

Barbara Hinton
Legislative Post Auditor
Merchants Bank Tower
800 S.W. Jackson, Suite 1200
Topeka, Kansas 66612-22212



Dear Ms. Hinton:

Thank you for the opportunity to comment on the draft compliance and control audit report on Emporia State University. Specifically, you have asked for our comments on findings that: (1) the university waived tuition charges without the authority to do so; and (2) the university charged different dormitory fees for like services which you believe is not consistent with the provisions of K.S.A. 76-6a05. I have attached the legal opinion of our General Counsel on both these issues. In summary, we do not agree with the findings in the draft document. A brief summary of our position on each issue follows.

The University waived tuition charges for National Guard students enrolled in its Reserve Officer Training Corps program without the authority to do so.

We believe that K.S.A. 74-3255 *et seq.* placed on the Board of Regents, a statutory mandate to provide waivers to National Guard students enrolled in the Reserve Officer Training Corps. However, we also believe that K.S.A. 76-719 gives the Board of Regents discretionary legal authority for establishing tuition, and waivers therefrom, at the Regents universities. Emporia State University, with the knowledge and consent of the Board of Regents, submits budget requests to the Division of Budget and the Legislative Research staff with the amounts of waivers specifically provided for ROTC students. While there is no direct legislative language specifically approving these waivers, it is clear that these numbers were used in formulating the general use budget of Emporia State University.

We would agree with, and encourage, the extension of K.S.A. 74-3255 *et seq.* in the next legislative session. This approval would result in the requirement for the Board to continue waivers for National Guard students rather than the discretionary program which now exists absent the statutory framework.

The University had not assessed uniform fees from dormitory residents.

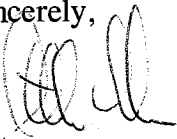
We believe that K.S.A. 76-6a05 does not require that rentals and boarding fees be "uniform" at all dormitories at a particular university, or at all dormitories at all of the Regents institutions. Rather, it only requires "uniformity" in the rents and fees at each specific dormitory. Further, we would submit that the requirement of "uniformity" does not, in fact, mandate that each student in a particular dormitory pay an identical amount.

The intent of the statute is that all student residents of a particular dormitory be treated "uniformly" relative to rents and fees for "like services, accommodations and meals" and/or that all student residents can be provided "uniform" opportunities for cost savings as long as the cost-saving opportunities are in fact legitimate, rational and not arbitrary.

We do think that the audit report serves as an important reminder to us relative to the requirements of the section. It also provides us with an opportunity to consider the meaning of the term "uniform" and work to pursue some common understandings in these regards.

Thank you for the opportunity to comment on the draft report. We would be pleased to discuss these issues with you at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'S.M. Jordan', written over a faint circular stamp.

Stephen M. Jordan
Executive Director

SMJ:jp

Enclosures

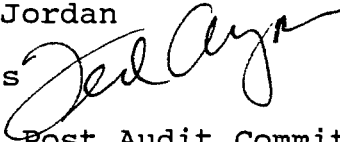


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700 SW HARRISON • SUITE 1410 • TOPEKA, KS 66603-3760

GENERAL ADMINISTRATION - 913 296-3421 • STUDENT ASSISTANCE - 913 296-3517 • FAX 913 296-0983

M E M O R A N D U M

TO: Stephen M. Jordan
FROM: Ted D. Ayres 
RE: Legislative Post Audit Committee Draft Report/Emporia State University/Dormitory Rates
DATE: March 29, 1994

You have solicited my professional opinion relative to the proposed audit finding regarding Emporia State University, i.e.

The University had not assessed uniform fees from dormitory residents.

The purpose of this memorandum is to provide said opinion for purposes of a response to Post Auditor Hinton.

I would refer you to K.S.A. 76-6a05, the statutory provision referred to by the proposed Post-Audit Report. That statute provides, in part, that:

. . .the board [of regents] is authorized to. . . establish and fix a schedule of, and charge and collect, rents and boarding fees from each student who shall room or board in such dormitory. Such rentals and boarding fees shall be **uniform** for like services, accommodations, and meals furnished. (emphasis provided) See also K.S.A. 76-761 which requires that "housing system" fees "be uniform for like services, accommodations and meals furnished."

The proposed Post Audit Report raises a question about an ESU "incentive to encourage students to reside in its dormitories" indicating that this "type of reduction does not seem to be in accordance with the requirements of State law."

Obviously, the key issue is the interpretation of the intent or meaning of the word "uniform" in the above-referenced statute. I would submit that the statute does not require that rentals and boarding fees be "uniform" at all dormitories at a particular university, or at all dormitories at all of the Regents Institutions, but, in fact, only requires "uniformity" in the rents and fees at each specific dormitory. I would further submit that

the requirement of "uniformity" does not, in fact, mandate that each student in a particular dormitory pay an **identical** amount.

It is my opinion that the intent of the statute is that all student residents of a particular dormitory be treated "uniformly" relative to rents and fees for "like services, accommodations and meals" **and/or** that all student residents be provided "uniform" opportunities for cost savings (as long as the cost-saving opportunities are in fact legitimate, rational and not arbitrary). Thus, in the case at hand, as long as all similarly situated students were provided an opportunity to benefit from the cost-saving or discount incentives, it is my belief that the general intent of the statute is met.

First, the language of the statute seems to speak in specific terms of one dormitory, i.e. "a student dormitory erected, and rented by the board, under the provisions of this act;" "in such dormitory;" "of such dormitory" (See full copy of statute attached hereto). Secondly, a requirement of "uniformity" (if "uniform" were to be interpreted as "identical") across the system would seem to ignore practical considerations relating to costs of construction, market requirements, differences in dormitory facilities, etc. Finally, an interpretation that would require all students in a dormitory to pay an exactly identical amount for "like services, accommodations and meals" reduces management flexibility and markedly decreases an institution's ability to stay competitive with the local housing market, which, ultimately could/does impact the institution's ability to meet its bond requirements.

I do think it valuable that the Post Audit Report for Emporia State makes reference to K.S.A. 76-6a05 as this serves as an important reminder for us relative to the requirements of the section. I think this Report also provides us with an opportunity to consider the meaning of the term "uniform" and work to pursue some common understandings in these regards.

I hope that this is responsive to your inquiry. Please advise should you or the Post-Audit staff have further questions or comments.

board is authorized and empowered to fix, charge, and collect, from each student in the institution at which such student union buildings shall be so erected, a fee of not to exceed five dollars for each regular term or semester and a fee of not to exceed two dollars for each summer session. The amount of such fees shall continue to be charged and collected from each of such students until sufficient in the aggregate has been realized therefrom to pay the total cost of construction and equipment of such building and interest thereon together with the expense of maintenance and operation thereof.

When the full amount of the costs of construction and equipment of such building, with interest thereon, has been paid, said board shall reduce the amount of such fee, but no change shall be made therein until such full amount has been paid. The board may pledge the receipts from such fees and the net income derived from the operation of any student union building to the nonprofit corporation which constructed such building for the payment of the cost of construction and equipment and the interest thereon.

History: L. 1941, ch. 364, § 4; June 30.

CASE ANNOTATIONS

1. Private citizen ordinarily cannot maintain action to determine power or authority of governmental agency; exception. *Rowlands v. State*, 187 K. 174, 178, 354 P.2d 674.

76-6a05. Room or board in dormitory by students; rentals and fees; pledge of incomes. For the purpose of paying for the maintenance, operation, and rental, including the payment of cost of construction and equipment and interest thereon, of a student dormitory erected, and rented by the board, under the provisions of this act, the board is authorized to determine what groups of students may room or board in such dormitory and to establish and fix a schedule of, and charge and collect, rents and boarding fees from each student who shall room or board in such dormitory. ~~Such rentals and boarding fees shall be uniform for like services, accommodations, and meals furnished.~~ The amount of such rents shall be continued to be charged and collected from students who shall room in such dormitory until sufficient in the aggregate has been realized therefrom to pay the total cost of construction and equipment of such dormitory and interest thereon together with the cost of maintenance and operation thereof.

When the full amount of the costs of construction and equipment of such dormitory, with interest thereon, has been paid, the board may reduce such rents, but no such reduction shall be made therein until such full amount has been paid. The board may pledge the net income of any such dormitory and of any other dormitory at the same institution to the nonprofit corporation which constructed such dormitory for the payment of the cost of construction and equipment and the interest thereon.

History: L. 1941, ch. 364, § 5; L. 1947, ch. 434, § 1; June 30.

Attorney General's Opinions:

State school dormitory rentals and fees, custodial accounts. 81-154.

Investment of state custodial account containing surplus reserves. 81-195.

State moneys; forestry, fish and game commission fee fund. 81-201.

76-6a06. Moneys to state treasurer; statements; credited to separate fund; disbursements. All moneys collected by the board under the provisions of K.S.A. 76-6a04 and 76-6a05 shall be deposited monthly with the state treasurer, who shall act as and be the custodian thereof for and on behalf of said board. Every such deposit shall be accompanied by a detailed statement showing the amount of such deposit which has been collected from and for the maintenance, operation, and cost of construction and equipment, including interest thereon, of each particular building. The state treasurer shall credit the amount collected from and for each particular building to a separate fund. From the amount credited to the fund of a particular building, the board shall pay: First, the expenses of the maintenance and operation of such building; and the remainder thereof shall be paid to said nonprofit corporation which constructed such building until the cost of construction and equipment and interest thereon be paid.

The director of accounts and reports shall draw warrants upon the treasurer of state against the funds created by this section upon the filing in his or her office of duly itemized and verified vouchers approved by the secretary of the board. Nothing contained in this section shall be construed as placing in the state treasury any money collected under this act and the legislature hereby declares that it does not intend to make such moneys subject to the provisions of section 24 of article 2 of the Kansas constitution.

of regents without having first advised and consulted with the joint committee on state building construction.

History: L. 1986, ch. 349, § 2; July 1.

76-758. Transfers between capital improvement projects financed from Kansas educational building fund; guidelines; consultation with joint committee on state building construction; approval by state finance council. The state board of regents may transfer amounts from one item of appropriation from the Kansas educational building fund for a project of an educational institution under the control and supervision of the state board of regents to another item of appropriation for a project at the same institution or for a project at any other educational institution under the control and supervision of the state board of regents upon approval by the state finance council acting on this matter which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c and amendments thereto, except paragraph (3) of that subsection (c), and in addition upon a finding by the state finance council that the transfer requested will permit the completion of the project from which amounts are transferred without substantially changing the scope of that project and will permit or aid in the completion of the project to which the transfer is made without substantially changing the scope of that project. The state board of regents shall not transfer any amount under this section from any item of appropriation from the Kansas educational building fund for a project of an educational institution to another item of appropriation for a project at the same or any other educational institution without having first advised and consulted with the joint committee on state building construction.

History: L. 1986, ch. 346, § 1; July 1.

76-759, 76-760. Reserved.

76-761. Housing system; creation and operation; rents and fees. There is hereby created under the chief executive officer of each state educational institution a housing system which shall be operated as an auxiliary enterprise of such state educational institution. The housing system shall be responsible for the maintenance, operation and rental of housing facilities operated at such state educational institution. The state board of regents is authorized to set policies for the operation of the

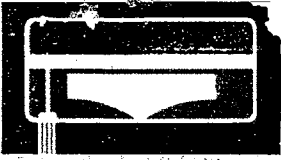
housing system and to establish and fix a schedule of, and charge and collect, rents, boarding fees and other charges for each student who rooms or boards in such dormitories or housing facilities. ~~The fees shall be uniform for like services, accommodations and meals furnished.~~

History: L. 1985, ch. 296, § 1; April 25.

76-762. Same; operating funds created; deposit of moneys; interest on moneys deposited in housing system suspense fund; use of moneys in funds. (a) There is hereby created in the custody of the state treasurer the following funds at each state educational institution from which the housing system shall be operated:

- (1) A housing system suspense fund;
- (2) a housing system operations fund; and
- (3) a housing system repairs, equipment and improvement fund.

(b) Payments received for rents and boarding fees and other charges in connection with the operation of the housing system shall be deposited to the housing system suspense fund in the custody of the state treasurer. On the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the housing system suspense fund, the amount of money certified by the pooled money investment board in accordance with this section. Prior to the 10th of each month, the pooled money investment board shall certify to the director of accounts and reports the amount of money equal to the proportionate amount of all the interest credited to the state general fund for the preceding period of time specified under this section, pursuant to K.S.A. 75-4210a and amendments thereto, that is attributable to money in each housing system suspense fund of state educational institutions. Such amount of money shall be determined by the pooled money investment board based on: (1) The average daily balance of moneys in each housing system suspense fund of state educational institutions during the period of time specified under this section as certified to the board by the director of accounts and reports and (2) the average interest rate on repurchase agreements of less than 30 days duration entered into by the pooled money investment board for that period of time. On or before the fifth day of the month for the preceding month, the director of accounts and reports shall certify to the pooled money investment board the average daily balance of moneys in each housing system suspense fund of state



KANSAS BOARD OF REGENTS

700 SW HARRISON • SUITE 1410 • TOPEKA, KS 66603-3760

GENERAL ADMINISTRATION - 913 296-3421 • STUDENT ASSISTANCE - 913 296-3517 • FAX 913 296-0983

M E M O R A N D U M

TO: Stephen M. Jordan
FROM: Ted D. Ayres *Ted D. Ayres*
RE: Legislative Post Audit Committee Draft Report/Emporia State University/ROTC Scholarship Program
DATE: March 28, 1994

You have solicited my professional opinion relative to the proposed audit finding regarding Emporia State University, i.e.

The University waived tuition charges for National Guard students enrolled in its Reserve Officer Training Corps program without the authority to do so.

The purpose of this memorandum is to provide said opinion for purposes of a response to Post Auditor Hinton.

It is, of course, embarrassing to have it brought to our attention, through this audit report, that the Reserve Officers' Training Corps Tuition Waiver Program (K.S.A. 74-3255 et seq.) expired on July 1, 1991, due to the language of K.S.A. 74-3261. While it is unfortunate that K.S.A. 74-3255 et seq. were permitted to expire, I believe sound rationale exists to argue that the University has been acting lawfully since July 1, 1991. I must therefore disagree with the broad conclusion that the Board of Regents (and Emporia State University [and the Regents Institutions]) have been without any authority in these regards since July 1, 1991.

I would refer you initially to K.S.A. 76-719 which provides that:

. . .the board of regents shall fix tuition, fees, and charges to be collected by each state educational institution.

In my opinion, this statute gives the Board of Regents legal authority relative to establishing tuition (and waivers therefrom) at the Regents universities.

I would next turn to actual practices of the Board and the Regents Institutions relative to submission of budgets to the Legislature. As you can see from Attachment One and Attachment Two, the Board of

Regents/Emporia State University have, since FY 92, considered, and then shared with the Division of Budget and Legislative Research staff, the amounts of waivers specifically provided for ROTC students. While there is no direct language specifically approving said waivers, it is clear that these numbers were used in formulating the general use budget of Emporia State University. The Division of Budget and the Kansas Legislature were annually informed as to the existence and amounts of the waivers for ROTC students at Emporia State (and the other Regents Institutions).

I do believe that K.S.A. 74-3255 **et seq.** should be formally extended for future years and I would certainly encourage legislative efforts in this regard (as you know, I have been in communication with the state Adjutant General's Office and I understand that that office plans to pursue a "remedy" through legislative reauthorization and continuation of the waiver program as soon as practically feasible). Nevertheless, it is my professional legal opinion, for the reasons provided above, that the Kansas Board of Regents (and Emporia State University) did have the authority to provide tuition waivers to these students through the broad legal authority of the Board relative to tuition, and because of the budget practices of the Board and Emporia State University.

I hope that this is responsive to your inquiry. Please advise should you or the Post-Audit staff have further questions or comments.

GENERAL FEES FUND
REVISED ESTIMATE BASED ON ACTUAL FALL 1992/SPRING 1993 HEADCOUNT ENROLLMENT

	74 87 Prior Year Actual			74 93 Current Year Revised Estimate			74 84 Request Year Revised Estimate		
	Headcount	Average Fee	Total Amount	Headcount	Average Fee	Total Amount	Headcount	Average Fee	Total Amount
1. Incidental Fees:									
Fall	6,108	\$486.65	\$2,972,446	6,088	\$529.17	\$3,221,604	6,088	\$561.15	\$3,416,298
Spring	5,913	469.91	2,778,588	5,550	530.37	2,943,569	5,550	562.48	3,121,766
Summer	15,307	48.43	741,298	15,535	49.47	768,482	15,535	53.81	835,875
1a. Subtotal			\$6,492,332 *			\$6,933,655 *			\$7,373,939 *
2. Other Fees			\$34,618			\$16,670			0
2a. Compensating Bank Balance			0			0			0
3. Net Revenue			\$6,526,950			\$6,950,325			\$7,373,939
4. Reappropriated Balance			133,718			388,863			17,042
5. Total Line 3. and 4.			\$6,660,668			\$7,339,188			\$7,390,981
6. Balance Carried Forward			(388,863)			(17,042)			(50,000)
7. Transfer to NDSL Fund			(30,000)			(30,000)			(30,000)
Transfer to SEOG Fund			(32,936)			(33,529)			(63,333)
8. Other Reductions			0			0			0
9. General Fees Available for Expenditure			\$6,208,869			\$7,258,617			\$7,247,648
10. Authorized Expenditure Limitation			(6,208,869)			(6,956,446)			(7,666,382)
11. Increase (Decrease) in Available for Expend.			\$0			\$302,171			(\$418,734)

* After reduction of fee waivers as follows:

	GTA	
Prior Year	232,178	39,995
Current Year	266,178	40,239
Request Year	282,160	42,653

Institution: Emporia State University

TABLE I

Date: February 28, 1994

REVISED GENERAL FEES ESTIMATE FOR FY1994 AND FY1995

ATTACHMENT TWO

	FY1993			FY1994			FY1995		
	Prior Year Actual Headcount	Average Fee	Total Amount	Current Year Revised Estimate Headcount	Average Fee	Total Amount	Request Year Revised Estimate Headcount	Average Fee	Total Amount
1. Tuition - Regular									
Fall	6,006	537.29	3,226,948	6,090	566.57	3,450,427	6,090	599.57	3,651,356
Spring	5,550	537.61	2,983,754	5,664	562.03	3,183,360	5,664	595.01	3,370,160
Summer	15,535	49.32	766,227	15,125	51.95	785,761	15,125	60.15	909,793
1b. Tuition - MHEP Gross Reduction							7	4,926.00	34,482
1b. Net							7	(2,773.71)	(19,416)
1c. Subtotal - Line 1. and 1b.			6,976,929*			7,419,548*	7	2,152.29	15,066
2. Other Fees			27,055			27,562			27,562
3. Net Revenue			7,003,984			7,447,110			7,973,937
4. Reappropriated Balance			388,863			380,370			50,000
5. Total Line 3. and 4.			7,392,847			7,827,480			8,023,937
6. Balance Carried Forward			(380,370)			(50,000)			(30,000)
7. Transfers to Loan Funds (specify): Perkins Loan			(30,000)			(30,000)			(30,000)
Educational Opportunity Grant Fund			(32,936)			(63,333)			(63,333)
8. Other Reductions (specify):									
9. General Fees Available for Expenditure (Sum of Lines 5. through 8.)			6,949,541			7,684,147			7,900,604
10. Authorized Expenditure Limit			6,956,446			7,561,999			8,069,861
11. Increase (Decrease) In General Fees Available for Expenditure			(6,905)			122,148			(169,257)
12. Calculation of Fee Release:									
Current Fall Headcount			6,090						
Prior Fall Headcount			6,006						
Fall Headcount Increase			84						
Multiplied by 2			168						
Multiplied by Fall Average Fee @ Sept. 15			95,718						
Multiplied by 100%			95,718						
									Fee Release

* After reduction of fee waivers as follows:

	GTA	ROTC
Prior Year	278,086	39,104
Current Year	280,976	47,198
Request Year	306,692	49,558

** Assumes a 5% increase in resident undergraduate tuition and a 13% increase in nonresident undergraduate tuition and no increase in graduate tuition for full-time students but, a change in the divisor for part-time graduate students from 15 to 12 credit hours.



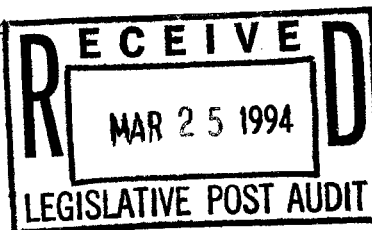
DEPARTMENT OF ADMINISTRATION
DIVISION OF ACCOUNTS AND REPORTS

JOAN FINNEY
Governor

JAMES R. COBLER
Director of Accounts and Reports

900 Jackson, Room 251
Landon State Office Building
Topeka, KS 66612-1220
(913) 296-2311
FAX (913) 296-6841

March 25, 1994



Ms. Barbara J. Hinton
Legislative Post Auditor
800 S.W. Jackson, Suite 1200
Topeka, Kansas 66612-2212

Dear Ms. Hinton:

You requested comments, corrections, or clarifications by your letter of March 21, 1994 concerning the draft of your compliance and control audit report on Emporia State University for fiscal year 1993. The section for which comments were requested pertains to the adherence to the recordkeeping and reporting requirements of the Division of Accounts and Reports. The particular finding and recommendations are contained on pages 9 and 10 of the draft and are:

The University Did Not Submit Required Reports to the Division of Accounts and Reports, But the Division Probably Would Not Have Used Them, and the Same Information Already Had Been Reported to the State Treasurer's Office

Recommendation

1. To eliminate unnecessary reporting by State agencies, the Division of Accounts and Reports should consider dropping its requirement that agencies submit semiannual bank certifications for their locally administered funds.
2. If the Division of Accounts and Reports decides to drop this requirement, the Division should notify State agencies of this decision.

Imprest funds are established in accordance with K.S.A. 75-3057 through 75-3077 and are to be administered in accordance with procedures and limitations adopted by the Director of Accounts and Reports and approved by the Secretary of Administration. Except for moneys held in change funds, the moneys of all imprest funds shall be kept in local banks designated or approved by the Pooled Money Investment Board (PMIB) pursuant to K.S.A. 75-3076 and shall be secured by pledge of securities having a market value equal to the amount of the account, less the amount of such account protected by the Federal Deposit Insurance Corporation (FDIC) as provided by K.S.A. 75-4218.

Ms. Barbara J. Hinton
Legislative Post Auditor
March 25, 1994
Page 2

This Division has pursued a policy for several years that the semiannual bank certifications only had to be filed in those instances when the authorized bank account limit exceeds the FDIC coverage limit for the account. Because the Division does not take any action based on the bank certification reports and because of the responsibilities of the PMIB regarding the approval of the placement of State moneys in banks and the pledging of securities by such the banks to guarantee the safety of the State's moneys, I concur with the recommendation to discontinue the submission requirement of semiannual bank certifications by the agencies to the Division of Accounts and Reports. A revision to PPM filing 10,802 pertaining to imprest funds is being prepared in which the bank certification requirements will be deleted therefrom.

If you have any questions about this matter or desire additional information, please let me know.

Very truly yours,

A handwritten signature in cursive script that reads "James R. Cobler".

James R. Cobler, Director
Division of Accounts and Reports

JRC:DI:mj

