

June 15, 1995  
ILR 95-F

President R. Lane Beattie  
Utah State Senate  
319 State Capitol Bldg  
Salt Lake City UT 84114

**Subject: Agency Compliance With Statutes and Rules**

Dear President Beattie:

We have completed preliminary work on your concern involving compliance with the **Utah Code**. Since your primary concern centered on instances of intentional non-compliance with the code, we focused on that area. Intentional non-compliance was defined as an awareness of the specific code coupled with a choice not to comply when compliance was possible. While our focus was on intentional non-compliance, we did identify other types of non-compliance which will also be reported in this letter. These types of non-compliance center around an unawareness of the code or circumstances which make compliance problematic such as a lack of funding or staff. The code problems cited in this report represent only what we have discovered in our preliminary work. They are not meant to represent a comprehensive list of all code compliance problems within state government.

In developing our initial list of potential code violations, we relied primarily on information supplied by legislative staff offices. We reasoned that legislative staff were in an excellent position to know about significant, potential code violations. In addition, we also talked with internal auditors within large departments and interviewed department and division directors in offices whose responsibilities cross agency lines (e.g. the Department of Administrative Services, the State Treasurer, and the State Auditor). We believed that agencies whose responsibilities required other agencies cooperation had greater potential for code compliance problems than an agency which does not have to work through or with other agencies to fulfill its responsibilities.

Using the above methodology, we identified 22 potential code violations. From this initial list of 22, we determined that ten did not have compliance problems while 12 did. For four (33%), the non-compliance was intentional. For eight (67%), the non-compliance was unintentional or problematic.

### **Some Code Non-Compliance Is Intentional**

There are statutes within the **Utah Code** which are intentionally violated. As noted above, five of the thirteen compliance problems that we found were intentional violations. The following is a list of specific intentional code violations and the agencies rationale for non-compliance:

1. **Utah Code 59-2-1007 (3)** states that the Tax Commission, in response to a centrally assessed property valuation dispute, shall set a time for hearing the objection and render a written decision no later than October first of the same year the objection is filed.

The Tax Commission does not comply with this statutory requirement. Our performance audit of the State Tax Commission (Report # 95-02) states that the Tax Commission does not render its decision on centrally assessed property disputes within the four-month time period stated in statute. The audit found that 18% of the 1991 appeals were still unresolved during the time of the audit. In other words, these appeals have been unresolved for over 36 months. The commissioners are aware that the statutory deadline for a written decision is not being met. In their opinion, it is not possible to render an informed decision in four months and, if they did render an opinion in four months, the case would be appealed in court. In an attempt to avoid a court appeal, the Tax Commission does not comply with the statutory decision date.

2. **Utah Code 53A-13-207** states that the state auditor shall, on the first day of June of each year, set up in allotment accounts the amount appropriated from the Automobile Driver Education Tax Account for expenditure under the direction of the State Board of Education.

The state auditor does not comply with this code section. The deputy state auditor emphasized the fact that his office is an audit office. As an audit office, it would be inappropriate for them to set up accounts for which they will be called upon to audit. In other words, their office needs to maintain independence and compliance with this statute would violate that independence. Instead, the Tax Commission sets up the allotment accounts.

3. **Utah Code 67-4-5** states that the state treasurer must quarterly post upon the door of his office a list of all warrants that he may have funds in the treasury to redeem or pay, the payment of which has not been demanded during the last quarter.

The state treasurer does not comply with this statute. The state treasurer indicated that this list is over three inches thick which makes it difficult to post on the door. Further, the state treasurer believes the law to be archaic.

4. **Utah Code 67-4-6** states that state warrants not presented to the state treasurer for payment within a period of two years from the date of issue shall be canceled and the proper fund credited therewith.

The state treasurer does not comply with this statute. The current administrative rules require that the state treasurer cancel outstanding warrants after one year. This one-year cancellation period is clearly stated on each warrant. Since the code does not give the state treasurer the authority to cancel warrants before two years, the state treasurer is technically violating the code.

In our opinion, the intentional code violations that we identified are not significant and could be handled by modifying the code. In fact, the State Auditor and the State Treasurer plan to come before the legislative session next year with recommended code changes to help bring their offices into code compliance. Also, our office made a similar audit recommendation to the Tax Commission as a way of addressing the issue involving property dispute decisions.

While these code citations represent intentional code violations, there were other non-compliance issues which arose because the code was unknown to the agency or because conditions made compliance problematic (ie., lack of staff or funding).

### **Some Code Non-Compliance Is Unintentional or Unavoidable**

The following statutes are not complied with because the agency was unaware of the code or because circumstances are such that the code cannot be followed. We found that when code provisions pertain to two agencies, one agency may be unaware of the statute because it has been placed in the other agency's section. Other times, we found that the code has become outdated or that funding or staffing issues made compliance problematic. As noted earlier, eight of the thirteen compliance problems that we found were unintentional or unavoidable. The following is a list of these specific code violations and the agencies' justification for non-compliance:

1. **Utah Code** 73-18-12.7 states that if a peace officer arrests or cites the operator of a vessel for violating Section 73-18-12.2 (boating under the influence of alcohol), the peace officer shall seize and impound the boat. If a registered owner of the vessel, other than the driver, is present at the time of arrest, the peace officer may release the vessel to that registered owner.

The peace officers working for the Department of Natural Resources do not always comply with this code section, primarily, because they were unaware of the mandatory nature of the code. In FY 1994, six citations for boating under the influence were issued by Natural Resources peace officers. We were able to determine that in five of the six cases, it was the sole owner of the vessel who was cited for boating under the influence. The boat was impounded in only one of the cases. In talking with the arresting officers, some indicated that they were unaware that an impound was mandatory under the circumstances described in the statute. They believed that the decision to impound was at their discretion. In addition, we were told that impounding a boat may be difficult because the state lacks the necessary facilities to impound boats at many recreational areas.

2. **Utah Code** 31A-3-101 (2) states that the insurance commissioner's record of receipts and deposits (of fees and premium taxes) and the state treasurer's record of Insurance Department receipts shall regularly be compared by the state auditor.

The deputy state auditor indicated that his office has never made any comparisons between these two records because the office was unaware of this code provision. This requirement is contained in the Insurance Department statute not the state auditor's statute. Further, with the implementation of the state's new accounting system (FINET), the deposit process has changed between the insurance commission and the state treasurer's office. The records to which the code refers are no longer available. Thus, compliance with the code as currently stated is no longer possible.

3. **Utah Code** 32A-1-114 states that there is a fund known as the City, Incorporated Town, and County Liquor Control Fund which shall be administered by the state auditor as provided by this section. On the first day of each fiscal year, the state auditor shall certify to the Division of Finance the amount of money available to each county, city, and incorporated town.

The Deputy State Auditor reported that his office has never certified money in this account because his office was unaware of this statute. This code is located in the section pertaining to the Alcohol and Beverage Commission. When the state auditor began to investigate this fund, it was determined that neither the director of the Division of Finance nor the Department Director of the Alcohol and Beverage Commission know what this fund is. In addition,

according to the deputy state auditor, no money has ever been allocated to this fund, so there is no money to certify.

4. **Utah Code 53A-21-118** states that the State Board of Education and the State Building Board must approve plans for construction of school buildings, including proposed building sites to be acquired as a part of the needs for which state aid is to be applied. The State Building Board shall assume major responsibility for structural plans, design, building materials, and other factors relating primarily to the construction of the buildings.

The former director of DFCM stated that DFCM has not performed the duties laid out in this statute. Until last year, DFCM administration was unaware of this code requirement which is located in Public Education's section of the statutes.

5. **Utah Code 62A-12-281 (3)** states that no person under the age of 18 years may be committed to the division (Mental Health) except .....on order of the juvenile court, in accordance with Section 62A-12-282.

Because management misunderstood the code requirements, the Utah State Hospital has not complied with this statute although, at the time of our review, they were working to bring themselves into compliance. Of the 65 children in custody at the time of our review, 63% had commitment papers from the juvenile court and 37% did not. When the juvenile commitment law went into effect in 1992, the State Hospital's administration did not thoroughly understand it and, as a result, continued to allow parents to place their children at the hospital without going through the court process. Lately, the staff at the State Hospital have been going through the process of obtaining commitment orders for all juveniles in its custody. Administration indicated that now that they fully understand the code requirements, they will comply.

6. **Utah Code 63A-5-103** states that the State Building Board shall assure the efficient use of all building space.

DFCM states that it cannot comply with this statute given its current staffing levels. The former director stated that in order to comply with this statute, DFCM staff would have to audit an agencies actual use of space. Since DFCM does not have the staff to perform these audits, they cannot comply with the statute. Instead, DFCM relies on agency generated space efficiency information.

7. **Utah Code 63-38-7** states that as of June thirtieth of each fiscal year the state auditor shall conduct a cash reconciliation of each petty cash, imprest cash or revolving fund now established and report the results to the director of finance.

The deputy state auditor states that his office cannot comply with this statute because they do not have the staff to audit the many petty cash funds in state government. These types of funds are covered as part of the State's Comprehensive Annual Report. However, it is possible that testing was done on an overall basis with no specific work being done in the above mentioned funds.

8. **Utah Code 63-65-3** states that an investment banking officer position to advise, counsel, and render technical assistance to authorizing agencies in the management of state loan and grant programs is created within the Office of the State Treasurer.

The State Treasurer reports that it is not possible to comply with this statute. While the position, which would have advised regarding bonding issues, has technically been created, the position has not been funded. The water loan boards, which wanted the position, were supposed to fund the position. However the boards balked at the amount of money the state treasurer requested to fund the position and opted instead to use the firm of Smith Capital Markets for loan analysis. In addition, it is possible that some of the duties described in this statute are performed by a position in the Division of Finance.

These 12 code violations represent what we identified from our preliminary test work. It should be noted that this audit was very difficult to conduct because there is a lack of methodology to audit for code compliance statewide. Generally, a compliance audit is focused within a specific program which makes the audit more manageable. Also, a compliance audit is often done in concert with a performance audit which allows for a more in-depth understanding of the effect of non-compliance with the code. Because this audit was statewide, auditing for code compliance was difficult. While our testing yielded some examples of code violations, it is our opinion that no significant code violations were found. In fact, many of the violations identified could be eliminated by code housecleaning changes.

While our primary goal was to identify code violations, we also attempted to determine if any other state had codified punishment for state employees who intentionally violate state code. To make this determination, we relied on staff knowledge at the National Conference of State Legislatures (NCSL). According to an NCSL staff member, she knows of no state which has codified punishment of state employees for intentional code violations. Thus, Utah may be the first state to take this action if a bill specifying such action passes the Legislature.

In conclusion, based on the results of our preliminary test, we recommend that no further statewide testing of code compliance take place. It is our experience that code compliance problems identified through specific program audits are usually corrected by the agency. Thus, if legislators are concerned about code compliance within a specific program, we recommend that the legislature direct audit work be performed in that specific program.

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We hope this letter has provided the information that you need on these issues. If you have further questions or concerns, please contact us.

Sincerely,

Wayne L. Welsh,  
Auditor General

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