

Maryland State Archives
Mail Log System
11/12/2004

Tracking No. 05-8153

Fox, Suzanne S.
Executive Director
State Ethics Commission
9 State Circle, Suite 200
Annapolis, MD 21401
410-974-2068

Date Received: 11/12/2004
Receipt No:
Amount Received: 0.00

Staff: ECP

Subject: FAX of finding of State
Ethics Commission regarding Atlas
in response to Legislative Audit
Report

COVER

SHEET

Facsimile Transmittal

STATE ETHICS COMMISSION

9 State Circle, Suite-200
Annapolis, Maryland 21401
(410) 974-2068 / 1-877-669-6085

Date: November 12, 2004
Fax To: Edward C. Papenfuse, State Archives
Fax #: (410) 974-3895
From: Herb Norfolk, Legal Assistant (410) 974-2068 Fax (410) 974-2365
Pages: 4 (Including Cover Sheet)

- URGENT!
- Please Acknowledge Receipt
- For Your Information
- Per Your Request
- As Discussed

CONFIDENTIALITY NOTICE: This facsimile contains information which may be confidential under the State Ethics Law and is intended only for the use of the person(s) named above. If you are not the intended recipient you are hereby notified that any dissemination or copying of this facsimile, or taking of any action in reliance on the contents of this telecopied information, may be strictly prohibited. If you have received this facsimile in error, please notify us immediately at (410) 974-2068 and return the entire facsimile to us at the address above via the U.S. Postal Service.

EXECUTIVE DEPARTMENT
STATE OF MARYLAND



ROBERT L. EHRLICH, JR.
GOVERNOR

COMMISSION MEMBERS:
DOROTHY R. FAIT, *Chairperson*
AVA S. FEINER, Ph.D.
JULIAN L. LAPIDES
ROBERT F. SCHOLZ

STATE ETHICS COMMISSION

9 STATE CIRCLE, SUITE 200
ANNAPOLIS, MARYLAND 21401
410-974-2068
Toll Free 1-877-669-6085
FAX: 410-974-2418

SUZANNE S. FOX
Executive Director
ROBERT A. HAHN
General Counsel
JENNIFER K. ALLGAIR
Staff Counsel
JILL B. MARTIN
Assistant Counsel

November 5, 2004

CONFIDENTIAL

Edward C. Papenfuse, Ph.D.
State Archivist and Commissioner of Land Patents
Maryland State Archives, Hall of Records
350 Rowe Boulevard
Annapolis, Maryland 21401

Dear Dr. Papenfuse:

At its October 28, 2004 meeting, the State Ethics Commission considered your June 24, 2004 letter and additional information gathered by the Commission's staff regarding issues addressed in the recent Office of Legislative Audits Report on the Maryland State Archives. Specifically, the Commission considered whether or not your involvement in transactions relating to the publication of *The Maryland State Archives Atlas of Historical Maps of Maryland 1608 - 1908* by Johns Hopkins Press presented any conflict of interest issues under the Public Ethics Law (Md. Code Ann., State Gov't Title 15 (Supp. 2004)).

The Commission recognizes that the Maryland State Archives is charged with preserving and obtaining artifacts, documents and maps related the Maryland's history and that this agency has been successful in this mission. Also, the Commission recognizes that your role as the State Archivist is a unique position in that you play an active role in obtaining additional funding for the agency to pursue documents and other collections, which are important to Maryland's history.

The Public Ethics Law applies to all State employees and officials. In this matter, the Commission reviewed whether or not your participation, as the State Archivist, in obtaining private grant money for the Maryland State Archives Foundation to publish a book that you co-authored created any issues under the Public Ethics Law. The Commission also considered the fact that the book was published by Johns Hopkins Press and that you have secondary employment as a part-time instructor at Johns Hopkins University. The Commission also recognized that you have consistently disclosed your secondary employment on your annual financial disclosure statement.

Dr. Edward C. Papenfuse
November 5, 2004
Page two

The Commission determined that your primary purpose in obtaining the grant money and loan for the book project was to generate funds for the Maryland State Archives. The Maryland State Archives has received approximately \$38,5000 to date from this project. Based on the language in the publishing contract and the number of books published, you do not stand to collect any royalties unless the book has a second printing, which, based on your experience, is unlikely. However, you stated that if a second printing of the book is published and royalties are paid, you will turn over any royalty payments to the Maryland State Archives. In the event that this occurs, the Commission would like written confirmation of the payment of royalties to the State. The Commission determined that you did not receive a personal financial gain, and, although there may be some benefit to your personal or professional prestige from the publishing of the book, it is difficult to distinguish that gain from the benefit to the State.

The Commission has some concern regarding the choice of Johns Hopkins Press as the publisher of the book, in light of your secondary employment with Johns Hopkins University as a part-time instructor. Based on the information obtained during our investigation related to the grantor's requirement that the book be published by a reputable publisher and the fact that a regional publisher would promote the book in a more beneficial way for the Maryland State Archives based on the regional interest of the book and the Maryland State Archives' past relationship with Johns Hopkins Press, the Commission will not pursue a further investigation of this matter.

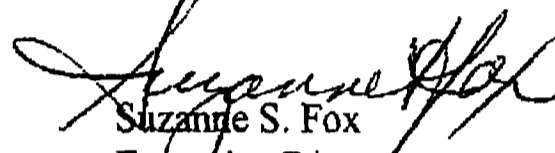
The Commission agreed with the Office of Legislative Audits' concern that counsel for the Maryland State Archives did not review the grant, loan and publishing agreements. The Commission requests that agency counsel review all such future documents and that the agency contact the State Ethics Commission for advice regarding the possible ethics implications in any future projects. The Commission will take a proactive approach to any similar agreements by providing advice on specific ethical issues in order to avoid any questions of impropriety in the future.

The Commission requests that you forward a copy of this letter to the Office of Legislative Audits. During your November 4, 2004 telephone conversation with Commission's Staff Counsel, Jennifer Allgair, you stated that you would rather forward a copy of the letter yourself than have the Office of Legislative Audits receive a copy of the letter from the Commission, and on the basis of this conversation, we informed the Office of Legislative Audits was told that you will forward a copy of the letter to them. You have requested that Assistant Attorney General Bonnie Kirkland receive a copy of this letter and Ms. Allgair has spoken Ms. Kirkland regarding the Commission's decision in this matter.

Dr. Edward C. Papenfuse
November 5, 2004
Page three

Please contact our office if you have any question regarding this or any future matter.
Thank you for your cooperation with the Commission's staff during the inquiry process.

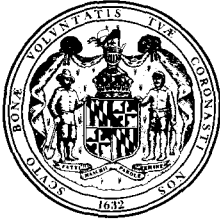
Sincerely,



Suzanne S. Fox
Executive Director

SSF/jka

cc: Bonnie Kirkland, Esquire



DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

November 3, 2004

Karl S. Aro
Executive Director

Bruce A. Myers, CPA
Legislative Auditor

Dr. Edward C. Papenfuse
State Archivist and Commissioner of Land Patents
State Archives
Hall of Records
350 Rowe Boulevard
Annapolis, Maryland 21401

Dear Dr. Papenfuse:

Enclosed is a copy of the Office of Legislative Audits' report dated October 27, 2004 covering the audit of the State Archives.

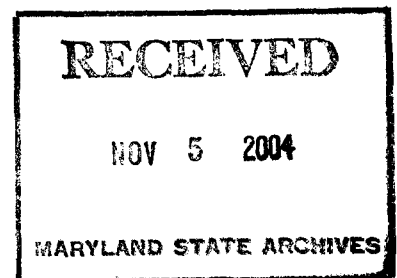
As prescribed by State Government Article, Section 2-1224 of the Annotated Code of Maryland, copies of all audit reports are made available to the public. Accordingly, this report will be available on November 8, 2004.

In accordance with the aforementioned law, we will review the actions indicated in your response to the audit report and will advise you of the results.

Sincerely,

Bruce A. Myers, CPA
Legislative Auditor

BAM/aab
Enclosure

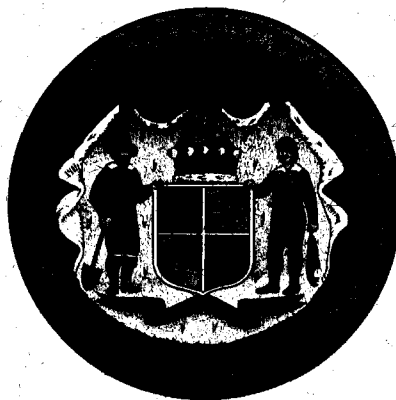


cc: Senator Nathaniel J. McFadden, Co-Chair, Joint Audit Committee
Delegate Charles E. Barkley, Vice Chair, Joint Audit Committee
Joint Audit Committee Members
Senator Thomas V. Mike Miller, Jr., President of the Senate
Delegate Michael E. Busch, Speaker of the House of Delegates
Senator Ulysses Currie, Chairman, Senate Budget and Taxation Committee
Delegate Norman H. Conway, Chairman, House Appropriations Committee
Governor Robert L. Ehrlich, Jr.
Comptroller William Donald Schaefer
Treasurer Nancy K. Kopp
Attorney General J. Joseph Curran, Jr.
Secretary James C. DiPaula, Jr., Department of Budget and Management
The Honorable Robert M. Bell, Chairman, Hall of Records Commission
Mr. Karl S. Aro, Executive Director, Department of Legislative Services

Audit Report

State Archives

October 2004



OFFICE OF LEGISLATIVE AUDITS
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

-
- **This report and any related follow-up correspondence are available to the public. Alternate formats may also be requested by contacting the Office of Legislative Audits as indicated at the bottom of the next page or through the Maryland Relay Service at 1-800-735-2258.**
 - **Please address specific inquiries regarding this report to the Audit Manager listed on the inside back cover by telephone at (410) 946-5900.**
 - **Electronic copies of our audit reports can be viewed or downloaded from the Internet via <http://www.ola.state.md.us>.**
 - **The Department of Legislative Services – Office of the Executive Director, 90 State Circle, Annapolis, Maryland 21401 can also assist you in obtaining copies of our reports and related correspondence. The Department may be contacted by telephone at (410) 946-5400 or (301) 970-5400.**
-



DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

Karl S. Aro
Executive Director

Bruce A. Myers, CPA
Legislative Auditor

October 27, 2004

Senator Nathaniel J. McFadden, Co-Chair, Joint Audit Committee
Delegate Charles E. Barkley, Vice-Chair, Joint Audit Committee
Members of Joint Audit Committee
Annapolis, Maryland

Ladies and Gentlemen:

We have audited the State Archives for the period beginning December 1, 2000 and ending February 1, 2004.

Our audit disclosed that the Archives routinely understated project revenues and expenditures related to projects performed for the Judiciary in its annual budget submissions. In addition, the Archives did not maintain adequate cost records for Judiciary related projects.

Our audit also disclosed that the Archivist participated in transactions which may have violated State ethics laws. In addition the Archives' computer network and Internet communications services were not adequately secured. We also noted that proper internal controls were not established over purchasing and disbursements and certain cash receipt procedures.

Respectfully submitted,

Bruce A. Myers, CPA
Legislative Auditor

Table of Contents

Executive Summary	5
Background Information	7
Agency Responsibilities	7
Current Status of Findings From Preceding Audit Report	7
Findings and Recommendations	9
Projects Funded by the Real Property Records Improvement Fund	
Finding 1 – The Archives Did Not Adequately Account for Funds Received From the Judiciary for Two Projects	9
Potential Conflict of Interest	
Finding 2 – The Archivist Participated in Several Transactions Related to the Publication of a Book Which May Have Violated State Ethics Laws	11
Procurements	
Finding 3 – Certain Contracts Were Not Procured in Accordance With State Law	12
Purchases and Disbursements	
* Finding 4 – Proper Internal Controls Were Not Established Over the Processing of Purchasing and Disbursement Transactions	14
Information Systems Security and Control	
Finding 5 – The Computer Network Was Not Adequately Protected From External Threats	15
Finding 6 – Internet Communication Services Supplied to State Agencies Were Not Adequately Secured	16
* Finding 7 – Computer Operations Were Not Adequately Secured	16
Cash Receipts	
* Finding 8 – The Archives Did Not Establish Adequate Controls Over Certain Cash Receipts	18
Audit Scope, Objectives, and Methodology	19
Agency Response	Appendix

* Denotes item repeated in full or part from preceding audit report.

Executive Summary

Legislative Audit Report on the State Archives October 2004

- **The Archives did not adequately budget or account for funds received from the Judiciary for certain projects. In addition, a formal contract was not executed with the Judiciary for one project. The Archives received approximately \$7.2 million of its \$10.9 million fiscal year 2004 budget through billings to the Judiciary.**

The Archives should ensure that all significant financial activity is included in its annual budget submission. In addition, project cost accounting records should be maintained for significant projects. Further, a formal contract should be executed to support agreements entered into with the Judiciary.

- **The Archivist executed several transactions related to the publication of a book, which may have violated State ethics laws.**

The Archivist should comply with any State Ethics Commission ruling on this matter. In the future, agency transactions in which the Archivist has a personal interest should be reviewed by legal counsel and the Commission to ensure compliance with State laws.

- **Certain contracts were not procured in accordance with State laws and regulations. In addition, proper controls were not established over certain purchasing and disbursement transactions.**

The Archives should ensure that contracts are procured in accordance with State law and regulations. In addition, the Archives should ensure that proper controls are established over purchasing and disbursement transactions.

- **The Archives did not adequately protect its computer network; communication services provided to State agencies were not adequately secured; and physical access to the computer room was not adequately restricted. In addition, the Archives did not have a formal disaster recovery plan.**

The Archives should ensure that its computer network and communication services are adequately secured. In addition, physical access to the computer rooms should be restricted and a formal disaster recovery plan should be established.

- **The Archives did not have adequate controls over certain cash receipts in that the individual responsible for verifying that recorded receipts were deposited also had unrestricted access to certain cash receipts stored in the safe.**

The Archives should ensure that an employee independent of the cash receipts function verify that all recorded collections were deposited.

Arundel Report

Neighborhoods

Television

ARUNDEL DIGEST

State ethics board clears archivist of map conflict

A state panel has cleared State Archivist Edward C. Papenfuse of any ethical lapse when he contracted with Johns Hopkins University Press to publish a book of historical maps of Maryland that he collected.

The State Ethics Commission ruled that the archivist did not receive a personal financial gain.

"Although there may be some benefit to your personal or professional prestige from the publishing of the book, it is difficult to distinguish that gain from the benefit to the state," Executive Director Suzanne S. Fox wrote in a letter Mr. Papenfuse received Nov. 13.

Mr. Papenfuse said he was humiliated in front of his family, friends and former students when a legislative auditor's determined there was an appearance of a conflict of interest.

He said he asked auditors to wait until the ethics report, which he requested in June, but they released their report earlier this month.

"I couldn't be more exasperated by this," the historian said yesterday.

Mr. Papenfuse originally contracted with Johns Hopkins, where he teaches part-time, to publish the maps in 1992. The roughly 2,500 books sold out, and in 2002 Mr. Papenfuse signed a new contract to publish the books.

He solicited \$100,000 in grants for the archives to underwrite the reprint.

All proceeds from the first printing went to the archives, as will proceeds from the second, he said.

"The state is going to get \$60,000 out of this for the State Archives Trust Fund," Mr. Papenfuse said.