

**Joint Legislative Committee on Performance
Evaluation and Expenditure Review (PEER)**

Report to
the Mississippi Legislature



The Department of Corrections' Management of Commissary Services and the Inmate Welfare Fund

The Mississippi Department of Corrections (MDOC) contracts with a third party to provide commissary services for state prisons and the private correctional facilities that house state inmates. In response to a citizen's request, PEER reviewed MDOC's management of commissary services and the Inmate Welfare Fund, a statutory fund established to receive revenues (including net profits from the operation of commissary services) that are to be used for the "benefit and welfare of inmates."

Regarding MDOC's management of commissary services:

- MDOC negotiated its contract with a company from which it had previously purchased canteen goods. Because MDOC did not procure the contract competitively, it cannot assure that it receives goods of acceptable quality at the highest commission percentage possible and, ultimately, that the largest possible amount of revenue flows into the Inmate Welfare Fund.
- MDOC's contract does not ensure that the contractor sets commissary prices using a sound methodology. Thus MDOC cannot assure that the contractor charges reasonable prices.
- MDOC's contract does not contain specific quality control provisions for commissary products or a requirement for a formal inmate complaint process.

Regarding MDOC's management of the Inmate Welfare Fund (IWF),

- MDOC has improperly reduced the amount of money available to the IWF;
- MDOC's policies on IWF Committee composition do not reflect the requirements of state law and the actual working membership of the IWF Committee does not comply with either MDOC's policy or with state law;
- state law does not include requirements for IWF Committee attendance, a quorum for voting, or stakeholder representation and neither MDOC nor the IWF Committee has established formal, written policies or rules regarding these issues;
- the IWF Committee has no formal, written criteria for making expenditures from the fund; and,
- MDOC has only recently complied with statutory requirements for reporting IWF financial information.

Also, conflicting statutory requirements for deposits of the Inmate Welfare Fund make it impossible for MDOC to comply with the law's requirements, thus compromising oversight of the fund.

June 14, 2011

PEER: The Mississippi Legislature's Oversight Agency

The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A joint committee, the PEER Committee is composed of seven members of the House of Representatives appointed by the Speaker and seven members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms, with one Senator and one Representative appointed from each of the U. S. Congressional Districts and three at-large members appointed from each house. Committee officers are elected by the membership, with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of four Representatives and four Senators voting in the affirmative.

Mississippi's constitution gives the Legislature broad power to conduct examinations and investigations. PEER is authorized by law to review any public entity, including contractors supported in whole or in part by public funds, and to address any issues that may require legislative action. PEER has statutory access to all state and local records and has subpoena power to compel testimony or the production of documents.

PEER provides a variety of services to the Legislature, including program evaluations, economy and efficiency reviews, financial audits, limited scope evaluations, fiscal notes, special investigations, briefings to individual legislators, testimony, and other governmental research and assistance. The Committee identifies inefficiency or ineffectiveness or a failure to accomplish legislative objectives, and makes recommendations for redefinition, redirection, redistribution and/or restructuring of Mississippi government. As directed by and subject to the prior approval of the PEER Committee, the Committee's professional staff executes audit and evaluation projects obtaining information and developing options for consideration by the Committee. The PEER Committee releases reports to the Legislature, Governor, Lieutenant Governor, and the agency examined.

The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

PEER Committee
Post Office Box 1204
Jackson, MS 39215-1204

(Tel.) 601-359-1226
(Fax) 601-359-1420
(Website) <http://www.peer.state.ms.us>

The Mississippi Legislature

Joint Committee on Performance Evaluation and Expenditure Review

PEER Committee

SENATORS
SAMPSON JACKSON
Vice Chair
TERRY BROWN
Secretary
SIDNEY ALBRITTON
MERLE FLOWERS
CINDY HYDE-SMITH
GARY JACKSON
NOLAN METTETAL



REPRESENTATIVES
HARVEY MOSS
Chair
WILLIE BAILEY
ALYCE CLARKE
DIRK DEDEAUX
WALTER ROBINSON
RAY ROGERS
GREG WARD

TELEPHONE:
(601) 359-1226

FAX:
(601) 359-1420

Post Office Box 1204
Jackson, Mississippi 39215-1204

Max K. Arinder, Ph. D.
Executive Director

www.peer.state.ms.us

OFFICES:
Woolfolk Building, Suite 301-A
501 North West Street
Jackson, Mississippi 39201

June 14, 2011

Honorable Haley Barbour, Governor
Honorable Phil Bryant, Lieutenant Governor
Honorable Billy McCoy, Speaker of the House
Members of the Mississippi State Legislature

On June 14, 2011, the PEER Committee authorized release of the report entitled **The Department of Corrections' Management of Commissary Services and the Inmate Welfare Fund.**

A handwritten signature in cursive script that reads "Harvey Moss".

Representative Harvey Moss, Chair

This report does not recommend increased funding or additional staff.

Table of Contents

Letter of Transmittal	i
List of Exhibits	v
Executive Summary	vii
Introduction	1
Authority	1
Problem Statement	1
Purpose and Scope	1
Method	2
MDOC's Management of Commissary Services	3
The Provision of Commissary Services at Correctional Facilities	3
Pricing of Commissary Items	8
Quality of Commissary Items	9
MDOC's Management of the Inmate Welfare Fund	11
Statutory Provisions and Sources of Revenues	11
Management of the Inmate Welfare Fund	14
Recommendations	29
Agency Response	35

List of Exhibits

1. Major Provisions of MDOC's Contract with Keefe Commissary 7
2. Flow of Revenue: Canteen Fund and Inmate Welfare Fund,
November 2007 through November 2010 13
3. Distribution of Total Commissary Sales to Canteen Fund and
Inmate Welfare Fund, November 2007 through November 2010..... 14
4. Major Categories of Expenditures from the Inmate Welfare Fund,
November 2007 through November 2010 28

The Department of Corrections’ Management of Commissary Services and the Inmate Welfare Fund

Executive Summary

Introduction

The Mississippi Department of Corrections (MDOC) contracts with a third party for *commissary services*^a for the benefit of inmates, their families, and visitors. Currently, the Department of Corrections has a contract with Keefe Commissary, LLC, to provide commissary services for Mississippi’s state prisons and those private correctional facilities that house state inmates.

PEER received a citizen’s request for a review of “canteen costs and operations” (i. e., commissary services), including pricing, product quality, and use of funds. In response to the citizen’s request, PEER sought to answer several specific questions about MDOC’s management of commissary services and the Inmate Welfare Fund (IWF).^b

MDOC’s Management of Commissary Services

How does MDOC provide commissary services to inmates?

In 2007, MDOC negotiated a contract for commissary services with a company from which it had previously purchased canteen goods. State law does not require MDOC to bid its contract with the commissary vendor. However, because MDOC did not procure the contract competitively, the department cannot assure that it is receiving goods of acceptable quality at the highest commission percentage possible and, ultimately, that the largest possible amount of revenue flows into the Inmate Welfare Fund.

^a In this report, *commissary services* refers to the manufacturing, storage, and delivery of goods, by way of a third-party vendor, to inmates of the Mississippi Department of Corrections. In the past, the state’s correctional facilities operated their own facilities or services, called “canteens,” to serve this function. Applicable CODE sections refer to this function as “the canteen” or “canteen services,” but for purposes of this report, PEER uses the term “commissary services.”

^b The *Inmate Welfare Fund* is a statutory fund established to receive revenues (including net profits from the operation of commissary services) that are to be used for the “benefit and welfare of inmates.”

With regard to pricing of commissary items, how does MDOC ensure that prices are reasonable?

Because inmates are under the care, custody, and control of the state, the state should assure that inmates receive an acceptable level of quality and service when they or their families or visitors pay for commissary items.

MDOC's contract with Keefe does not ensure that the contractor determines commissary prices through a sound methodology. Thus MDOC cannot assure that Keefe charges inmates and their families reasonable prices for commissary items.

With regard to quality of commissary items, how does MDOC ensure that inmates receive items of acceptable quality?

According to canteen managers' descriptions of the process for delivery and distribution of commissary items, inmates are allowed to make complaints regarding commissary services.

However, MDOC's contract with Keefe does not contain specific quality control provisions for commissary products or a requirement for a formal inmate complaint process. Thus MDOC has no assurance that the vendor will continue to follow this process throughout the duration of the contract.

MDOC's Management of the Inmate Welfare Fund

What is the Inmate Welfare Fund?

MISS. CODE ANN. Section 47-5-109 (1972) requires that funds derived from canteen operations (i. e., commissary sales) be deposited into a Canteen Fund. The Canteen Fund serves as an operating account; certain costs attributable to commissary services are charged as operating costs (e. g., rent, utilities, and employee wages) against profits earned. Any net profits and interest go to the Inmate Welfare Fund, established by MISS. CODE ANN. Section 47-5-158 (1972).

MISS. CODE ANN. Section 47-5-158 (1) (1972) requires that the Inmate Welfare Fund be used "for the benefit and welfare of inmates in custody of the department." Section 47-5-158 (7) creates an Inmate Welfare Fund Committee "to administer and supervise the operations and expenditures" from the fund. The CODE specifies that the committee is to be composed of seven members: the Deputy Commissioner for Community Corrections, the Deputy Commissioner of Institutions, the Superintendent of the Parchman facility, the Superintendent of the Rankin

County facility, the Superintendent of the Greene County facility, and two members to be appointed by the Commissioner of Corrections.

What money goes into the Inmate Welfare Fund?

The Inmate Welfare Fund receives net profits from commissary sales, forty percent of MDOC's telephone commissions, interest income, and other revenues as designated by the Commissioner of Corrections. From November 2007 through November 2010, approximately \$12.7 million was made available from these sources to the Inmate Welfare Fund Committee to be used for the benefit and welfare of inmates.

Does MDOC comply with state laws regarding the Inmate Welfare Fund and does the department use the fund to provide for the "benefit and welfare of inmates?"

Generally, MDOC's actions regarding the Inmate Welfare Fund cannot be described as violating the law. However, PEER determined that:

- MDOC has improperly reduced the amount of money available to the Inmate Welfare Fund (see pages 15-16);
- MDOC's policies on IWF Committee composition do not reflect the requirements of state law and the actual working membership of the IWF Committee does not comply with either MDOC's policy or with state law (see page 17);
- state law does not include requirements for Inmate Welfare Fund Committee attendance, a quorum for voting, or stakeholder representation and neither MDOC nor the Inmate Welfare Fund Committee has established formal, written policies or rules regarding these issues (see page 18);
- the IWF Committee has no formal, written criteria for making expenditures from the Inmate Welfare Fund (see pages 19-24); and,
- MDOC has only recently complied with statutory requirements for reporting IWF financial information (see pages 25-26).

Also, PEER found that conflicting statutory requirements for deposits of the Inmate Welfare Fund make it impossible for MDOC to comply with the law's requirements, thus compromising oversight of the Inmate Welfare Fund (see pages 26-28).

Recommendations

1. Prior to the expiration of the department's current contract with Keefe Commissary, LLC, the department should utilize a competitive process to procure a commissary contractor for a new contract period.

As part of the process, the department should develop and issue a formal request for proposals (RFP) in order to locate companies interested in providing commissary services to the department. The RFP should clearly articulate the types of services needed by the department and factors by which the department will evaluate and score each offeror's proposal. In addition, the RFP should require offerors to describe their qualifications to provide commissary services to correctional facilities in widely dispersed geographical regions. Offerors should also be required to provide contact information of references that could attest to such qualifications.

The RFP should describe the department's expectations with regard to commissions, pricing, and quality assurance, as described below.

Commissions—The RFP should require offerors to describe fully the proposed commissions to be paid to the department for the opportunity to provide commissary services. Such description should include the basis for computing commissary commissions and the timeframe for remitting commissions to the department.

Pricing—The RFP should require offerors to describe fully their proposed sampling methods for setting prices at the prison canteens to ensure that prices charged by the canteens are reasonable and fair to those purchasing through the canteen system. Should MDOC continue to allow a comparison of convenience store prices to be the basis for setting canteen prices, the RFP should require offerors to specify in their proposals the proposed locations, types, and number of stores and products to be sampled in order to ensure that sufficient data is collected to determine the variation and central tendency of product prices. In establishing individual product prices, the commissary contractor should be required to select the measure of central tendency that best fits the distribution of the sample price data. Should a commissary contractor

determine that prices should be adjusted, the RFP should require an offeror to keep all records pertaining to requested price adjustments, including supporting sample data and calculations of central tendency, and corresponding documentation of the Commissioner's action on the request (approval or disapproval).

Quality Assurance—The RFP should require offerors to describe fully their proposed processes for ensuring the freshness and quality of goods sold through commissary services. Such processes should also include proposed performance indicators with which MDOC could audit or gauge the quality of service provided by the contractor. The RFP should require an offeror to keep all records pertaining to the company's monitoring of its quality assurance processes. In addition, the RFP should require an offeror's quality assurance proposal to include a description of the recourse through which inmates could express their dissatisfaction with quality or delivery of goods purchased from prison canteens.

2. The Legislature should amend MISS. CODE ANN. Section 47-5-158 (1972) to clarify the department's fiscal management responsibilities over the Inmate Welfare Fund. The Legislature should choose one of the following three options:

- *Option One:* Delete the requirement that IWF funds be deposited into the State Treasury. By deleting this requirement, no question could arise as to whether the Department of Corrections can operate the fund through a bank account without the controls customarily applied to the expenditures of public funds.

If this option is selected, the Legislature should further amend MISS. CODE ANN. Section 47-5-158 (1972) to require that the Inmate Welfare Fund Committee adopt rules that set out standards for appropriate use of the fund. Such standards should define what types of items will constitute allowable purchases for inmate welfare.

Additionally, the Legislature should further amend the same section to:

- establish a quorum requirement for the IWF Committee (e. g., four members);
- require the appointment of a person to represent the interests of inmates' families;

- set minimum attendance requirements for committee members;
 - require the committee to adopt a mission statement to guide the development of any policies and procedures the committee adopts regarding the use of the Inmate Welfare Fund; and,
 - require the committee to conduct needs assessments to determine what types of purchases should be made for the benefit of inmates. Such assessments should seek information not only from MDOC personnel, but also from families of inmates, as well as inmates.
- *Option Two:* Delete the provision regarding MDOC's authority to keep the IWF funds in a bank account and require that they be deposited to a special fund from which the Inmate Welfare Fund Committee may make disbursements in accordance with appropriations authority. Under this option, the money would be deposited to a Treasury fund and be withdrawn only on Treasury warrants. The Department of Corrections would have to obtain appropriations authority to make any withdrawals from the fund.

If this option is selected, the Legislature should further amend MISS. CODE ANN. Section 47-5-158 (1972) to require that the Inmate Welfare Fund Committee adopt rules that set out standards for appropriate use of the fund. Such standards should define what types of items will constitute allowable purchases for inmate welfare.

Additionally, the Legislature should further amend the same section to:

- establish a quorum requirement for the IWF Committee (e. g., four members);
- require the appointment of a person to represent the interests of inmates' families;
- set minimum attendance requirements for committee members;
- require the committee to adopt a mission statement to guide the development of any policies and procedures the committee adopts regarding the use of the Inmate Welfare Fund; and,

- require the committee to conduct needs assessments to determine what types of purchases should be made for the benefit of inmates. Such assessments should seek information not only from MDOC personnel, but also from families of inmates, as well as inmates.
 - *Option Three:* Abolish the Inmate Welfare Fund and deposit all funds derived from commissary operations and other IWF revenue sources into the state's general fund. This would entail repealing CODE Section 47-5-158 and amending Section 47-5-109 to provide that canteen profits be deposited to the General Fund.
3. To aid in oversight and public policy decisionmaking regarding MDOC, the Legislature should amend MISS. CODE ANN. Section 47-5-109 (1972) to require MDOC to submit annual financial statements of the Canteen Fund to the Chairs of the House and Senate Corrections committees, Legislative Budget Office, and the Corrections Auditor.
 4. In the event that the Legislature adopts Option One set out above, in compliance with MISS. CODE ANN. Section 47-5-158 (5) (1972), MDOC officials should continue to prepare an annual report for the Inmate Welfare Fund that includes a summary of expenditures from the fund by major categories and by individual facility and should submit the annual report to the chairs of the House and Senate Corrections committees, the Legislative Budget Office, and the Corrections Auditor. Additionally, in compliance with MISS. CODE ANN. Section 47-5-158 (5) (1972), MDOC should continue to prepare quarterly consolidated and individual financial statements and submit them to the Corrections Auditor.
 5. The MDOC should refine its standard operating procedures to include defining permissible costs of operation for the Canteen Fund to ensure that only necessary, canteen-related expenditures are being subtracted from total profit prior to the funds being placed in the Inmate Welfare Fund, as required by MISS. CODE ANN. §47-5-109 (1972).

These expenditure guidelines should address, but not be limited to:

- which canteen employees' salaries and wages may be paid from the fund and the job descriptions for those positions; and,

- specific criteria that would qualify an expenditure as one for a “canteen-related service,” including those related to the canteen warehouse, services that are offered by the MDOC as part of its agreement with a third-party vendor, and items/services necessary to accomplish those duties.

For More Information or Clarification, Contact:

PEER Committee
P.O. Box 1204
Jackson, MS 39215-1204
(601) 359-1226
<http://www.peer.state.ms.us>

Representative Harvey Moss, Chair
Corinth, MS 662-287-4689

Senator Sampson Jackson, Vice Chair
Preston, MS (601) 677-2305

Senator Terry Brown, Secretary
Columbus, MS (662) 329-3399

The Department of Corrections’ Management of Commissary Services and the Inmate Welfare Fund

Introduction

Authority

The PEER Committee reviewed the Mississippi Department of Corrections’ (MDOC’s) commissary services contract and operations. PEER also reviewed MDOC’s management of the Inmate Welfare Fund, a statutory fund established to receive revenues (including net profits from commissary services) that are to be used for the “benefit and welfare of inmates.” The Committee acted in accordance with MISS. CODE ANN. Section 5-3-51 et seq. (1972).

Problem Statement

The Department of Corrections contracts with a third party for *commissary services*¹ for the benefit of inmates, their families, and visitors. Currently, the department has a contract with Keefe Commissary, LLC, to provide commissary services for Mississippi’s state prisons and those private correctional facilities housing state inmates. PEER received a citizen’s request for a review of “canteen costs and operations” (i. e., commissary services), including pricing, product quality, and use of funds.

Purpose and Scope

In response to the citizen’s request, PEER sought to answer several specific questions.

Regarding MDOC’s management of commissary services:

- How does MDOC provide commissary services to inmates?

¹ In this report, *commissary services* refers to the manufacturing, storage, and delivery of goods, by way of a third-party vendor, to inmates of the Mississippi Department of Corrections. In the past, the state’s correctional facilities operated their own facilities or services, called “canteens,” to serve this function. Applicable CODE sections refer to this function as “the canteen” or “canteen services,” but for purposes of this report, PEER uses the term “commissary services.”

- With regard to pricing of commissary items, how does MDOC ensure that prices are reasonable?
- With regard to quality of commissary items, how does MDOC ensure that inmates receive items of acceptable quality?

Regarding MDOC's management of the Inmate Welfare Fund (i. e., a statutory fund established to receive revenues [including net profits from the operation of commissary services] that are to be used for the "benefit and welfare of inmates"):

- What is the Inmate Welfare Fund?
- What money goes into the Inmate Welfare Fund?
- Does MDOC comply with state laws regarding the Inmate Welfare Fund and does the department use the fund to provide for the "benefit and welfare of inmates"?

PEER did not evaluate the performance of MDOC's commissary contractor (Keefe Commissary, LLC).

Method

In conducting this review, PEER:

- reviewed the provisions of MISS. CODE ANN. §47-5-158 (1972) regarding the Inmate Welfare Fund and provisions of MISS. CODE ANN. §47-5-109 (1972) regarding the Canteen Fund;
- interviewed personnel of the Department of Finance and Administration (DFA), the Department of Corrections, and Keefe Commissary, LLC;²
- analyzed the Department of Corrections' rules, regulations, and practices related to Canteen Fund and Inmate Welfare Fund expenditures and operations;
- reviewed Canteen Fund and Inmate Welfare Fund financial records for the period of November 2007 through November 2010;
- reviewed minutes of the Inmate Welfare Fund Committee meetings from November 2007 through November 2010; and,
- interviewed members of the Inmate Welfare Fund Committee.

² On November 2, 2007, MDOC contracted with G. T. Enterprises for commissary services for its facilities. In 2008, G.T. Enterprises sold business operations to Centric Group and the company took over the contract, resulting in a proprietary company, Keefe Commissary, LLC, taking responsibility for providing services for Mississippi.

MDOC's Management of Commissary Services

In this chapter, PEER addresses the following questions:

- How does MDOC provide commissary services to inmates?
- With regard to pricing of commissary items, how does MDOC ensure that prices are reasonable?
- With regard to quality of commissary items, how does MDOC ensure that inmates receive items of acceptable quality?

The Provision of Commissary Services at Correctional Facilities

How does MDOC provide commissary services to inmates?

MDOC negotiated a contract for commissary services with a company from which it had previously purchased canteen goods. Because MDOC did not procure the contract competitively, the department cannot assure that it is receiving goods of acceptable quality at the highest commission percentage possible and, ultimately, that the largest possible amount of revenue flows into the Inmate Welfare Fund.

MDOC's Contract for Commissary Services

In November 2007, MDOC chose to outsource its commissary services rather than provide such services in-house.

Prior to entering into a contract for commissary services, MDOC purchased bulk quantities of canteen goods (e. g., cigarettes, crackers, noodles, and cookies), stored them in warehouses at each correctional facility, then bagged and delivered them to inmates. Because MDOC had purchased the majority of its canteen goods from G. T. Enterprises, the department made the decision to allow that company to provide commissary bagging and delivery services to the Central Mississippi Correctional Facility (CMCF) in Rankin County on a pilot basis. (MDOC chose CMCF for the pilot test because G. T. Enterprises had a warehouse located in Rankin County.) Later, MDOC chose to enter into a contract with G.T. Enterprises on November 2, 2007, to supply commissary services to state prisons and those private correctional facilities housing state inmates (see Exhibit 1, page 7).

On March 25, 2008, G. T. Enterprises assigned its commissary services contract to Centric Group (doing business as Keefe Commissary, LLC), resulting in Keefe becoming responsible for commissary services. MDOC's current contract for commissary services covers the period

January 1, 2008, through December 31, 2011. Exhibit 1, page 7, contains the major provisions of MDOC's contract with Keeffe for commissary services.

No Competitive Procurement of Commissary Contract

State law does not require MDOC to bid its contract with the commissary vendor. However, because the department did not use a competitive procurement process, MDOC cannot assure that it is receiving the highest commission percentage possible and, ultimately, the largest possible amount of revenue flowing into the Inmate Welfare Fund.

The state has provisions of law addressing the competitive procurement of goods and personal services. MISS. CODE ANN. Section 31-7-1 et seq. (1972) addresses the procurement of commodities for use by state agencies. Additionally, MISS. CODE ANN. Section 26-9-120 (1972) establishes a competitive process for state agencies' procurement of personal services. In the case of commissary services, it appears to PEER that neither the commodities provisions nor the personal service contracting provisions are applicable, since the commissary service provider is not providing commodities or services to the Department of Corrections. The department's General Counsel also concluded that no statute or regulation would require MDOC to conduct a formal RFP process for this contract.

MDOC's Procurement of the Commissary Contract

Rather than utilizing a competitive process to locate a commissary contractor, MDOC negotiated a contract with G.T. Enterprises, a company from which it had previously purchased canteen goods.

According to MDOC managers, the department had contemplated outsourcing commissary services at its correctional facilities for several years. The department considered the primary benefits of outsourcing to be the elimination of:

- risks of storing large perishable inventories on prison grounds;
- problems associated with managing canteen staff in various correctional facilities; and,
- challenges associated with ordering from suppliers and ensuring that canteen items were in stock.

Because G. T. Enterprises had functioned as the department's largest supplier of canteen goods and because, according to MDOC officials, the department had had a positive experience with the company on a pilot basis at CMCF, MDOC selected the company to provide commissary services to state prisons and those private

correctional facilities housing state inmates, entering into a contract on November 2, 2007.

The department did not utilize a formal request for proposals to determine whether there were other commissary service companies interested in providing such services to the department. Rather, the department entered into negotiations with G. T. Enterprises and eventually signed a contract with the company for the provision of commissary services on a statewide basis.

As stated on page 4, MDOC was not subject to any specific statutory requirements with regard to the procurement of commissary services. However, because public entities are bound by responsibility to expend resources efficiently, effectively, and fairly, they should adhere to effective contracting processes or a “best practices” model. One such model for procurement is the American Bar Associations’ *Model Procurement Code for State and Local Governments*. The primary purpose of the *Code* was to help create transparent, competitive, and reliable processes by which public funds could be expended through contracts with private sector businesses.

With regard to competitive procurement, the ABA *Model Procurement Code* recommends the following components in the procurement process and that they be followed in this general order:

- developing a request for proposals detailing the services to be provided;
- providing public notice;
- receiving proposals;
- developing evaluation factors;
- holding discussions with responsible offerors and allowing revisions to proposals;
- selecting a vendor for award; and,
- holding debriefings with proposers that were not selected.

Because it should have been the department’s intent to select a commissary services provider to make goods of acceptable quality available for purchase while maximizing commissary revenues at the least cost (see page 9 for a discussion of the quality of commissary items), it was imperative that the department adhere to accepted competitive procurement principles such as those promulgated by the American Bar Association. In correspondence to department managers regarding this subject on January 14, 2011, MDOC’s General Counsel, while noting that no state law required the department to use a request for proposals process, noted that “a comparison of services, products, prices as well as any

other factors that MDOC deems important that are offered by different vendors would be advisable.”

Commissary Commissions Affect the Amount of Revenue Flowing Into the Inmate Welfare Fund

MDOC’s contract with the commissary vendor sets the percentage that the department receives from commissary sales. The money earned from this commission is used to pay for commissary operations and the remainder goes to the Inmate Welfare Fund. Thus the commission percentage that MDOC agrees to in the commissary contract ultimately affects the amount of money flowing into the Inmate Welfare Fund.

Although state law does not require MDOC to use a competitive procurement process for the commissary contract, the department receives a commission from the services provided and uses the revenue for canteen operations. A portion of this money ultimately flows into the Inmate Welfare Fund (see pages 11-12).

As noted in Exhibit 1, page 7, under the current contract MDOC receives a 29.4% commission on total commissary sales³ per month from the public facilities and 24% commission on commissary sales at the private facilities. During the period November 2007 through November 2010, these commissions amounted to \$7,661,741 (see page 12).

Because the department did not procure the commissary contract competitively, neither the department nor PEER has any basis to determine whether the department could have received higher commissions from another commissary services contractor. However, it is quite possible that the use of a competitive market mechanism, such as a bid, could have yielded higher commissions because firms interested in obtaining state business would have known that offering the state more advantageous terms would have placed them in a more competitive position in comparison to other firms. Higher commission percentages could have generated additional revenues for the Inmate Welfare Fund.

³ Excludes sales tax amounts, stamped postcard sales, and postage stamp sales.

Exhibit 1: Major Provisions of MDOC's Contract with Keefe Commissary

Type of Service Provided:

Keefe stocks commissary items in a centralized warehouse and provides a menu from which inmates may order. Keefe fills orders weekly and handles the packaging and delivery of items to the facilities.

Facilities Served:

Public Facilities--Central Mississippi Correctional Facility, Mississippi State Penitentiary, and South Mississippi Correctional Institution.

Private Facilities--Delta, East Mississippi, Marshall County, Walnut Grove Youth, and Wilkinson County.

The county and county/regional facilities still operate individual canteens and are not covered by the contract with Keefe.

Payment Provisions:

MDOC receives a 29.4% commission on total commissary sales per month at public facilities and 24% commission on commissary sales at the private facilities. From its commissions, Keefe pays for the cost of commissary goods sold and operating expenses associated with the contract.

Keefe receives a 70.6% commission on total commissary sales per month at public facilities and 76% commission on commissary sales at the private facilities.

MDOC receives a 10% commission on visitation bags (i.e., pre-packaged bags available for purchase by families during visitation) sold by Keefe, with Keefe receiving a 90% commission on such sales.

Keefe remits sales taxes collected on sales monthly to the Mississippi Department of Revenue.

Pricing of Products:

Keefe sets prices based on "the average of convenience store prices" determined through a biannual survey of convenience store pricing (with the price increase to be approved by the Commissioner of Corrections).

SOURCE: PEER analysis of MDOC's contract with Keefe.

< Excludes sales tax amounts, stamped postcard sales, and postage stamp sales.

Pricing of Commissary Items

With regard to pricing of commissary items, how does MDOC ensure that prices are reasonable?

MDOC's contract with Keefe does not ensure that the contractor determines commissary prices through a sound methodology. Thus MDOC cannot assure that Keefe charges inmates and their families reasonable prices for commissary items.

Because inmates are under the care, custody, and control of the state, the state should assure that inmates receive an acceptable level of quality and service when they or their families or visitors pay for commissary items.

As noted in Exhibit 1, page 7, MDOC's contract with Keefe requires that Keefe set the prices of items based on "the average of convenience store prices" and that to determine this average, Keefe is to survey convenience store prices two times per year and request price adjustments for commissary items from the Commissioner of Corrections.

In 2009 and 2010, Keefe surveyed two and four stores, respectively, to determine what price adjustments to suggest to MDOC for the Commissioner's approval. MDOC has no documentation of the location of the stores surveyed or how the determination was made to survey these particular stores. According to the Keefe representative assigned to MDOC, commissary prices have had two price increases since Keefe took over the contract. MDOC could not provide any documentation showing that Keefe had formally requested any price increases or the Commissioner's approval of any price increases.

According to the Deputy Commissioner of Administration and Finance, the Commissioner will only allow one price adjustment per year; therefore, Keefe only conducts one price survey annually.

PEER found that MDOC's contract with Keefe does not specify where or how price surveys will be conducted. The contract does not specify a selection method for the convenience store price survey (e. g., number of stores to be surveyed, location of stores, or a range of miles within which stores should be surveyed) or a sampling procedure to be used. Thus the contract does not ensure that the contractor's survey contains an adequate representation of convenience stores, including products and prices.

Although PEER is not suggesting that any previous commissary price increases were unreasonable, because MDOC has not specified a pricing methodology in its contract with Keefe, the department cannot protect inmates and families from unreasonable price increases for commissary items.

Quality of Commissary Items

With regard to quality of commissary items, how does MDOC ensure that inmates receive items of acceptable quality?

According to canteen managers' descriptions of the process for delivery and distribution of commissary items, inmates are allowed to make complaints regarding commissary services. However, MDOC's contract with Keefe does not contain specific quality control provisions for commissary products or a requirement for a formal inmate complaint process.

Facilities' Delivery and Distribution of Commissary Items

MDOC's policies regarding delivery and distribution of commissary items applied to the old canteen system and the department has not updated them since implementing the agreement with the commissary vendor. However, according to canteen managers, in practice, the correctional facilities have a basic, functioning quality assurance and complaint process for commissary services.

Although the Keefe contract covers state prisons and those private correctional facilities housing state inmates, commissary management differs by facility. At Central Mississippi Correctional Facility and South Mississippi Correctional Institution, Keefe staff serve as commissary managers. At Parchman Penitentiary, MDOC staff serve as commissary managers. At each of the private facilities covered by the Keefe contract, the private facility's staff serve as commissary managers.

MDOC's policies regarding delivery and distribution of commissary items applied to the old canteen system and the department has not updated them since implementing the agreement with the commissary vendor. However, according to commissary managers,⁴ the following is the practice used at both public and private facilities to assure that inmates receive goods of acceptable quality in their commissary orders.

- Once commissary goods arrive at the facility warehouse via a Keefe representative, the commissary staff sorts them by inmate unit and custody level and then distributes them. Sometimes at larger facilities, sorting and distribution take more than one day.
- The inmate may individually inspect the items, in the presence of commissary staff, for quality of the goods or correctness of the order and at the end of the process signs the invoice as a statement that he or she has verified that all items are present and of an acceptable level of quality. The inmates also have the option to simply sign the invoice and take the bag

⁴ PEER did not perform on-site inspections of actual quality assurance practices at each facility.

(should they not want to go through the items for privacy reasons).

- Should the inmate determine that an item is damaged or missing, the commissary staff person notes it on the invoice, which is then turned over to the commissary manager, who is responsible for reviewing the error and reconciling the problem with Keefe. This generally results in Keefe shipping the correct or missing item during the next shipping period. In some cases, Keefe uses surplus items gained from incorrect shipments from other inmates to fill existing needs before the entire shipment is sent back to Keefe; however, this is contingent upon the needed goods being in the surplus for that week.

Thus, according to commissary managers, inmates have the opportunity to determine whether they received the proper items in their commissary order and whether the items are in acceptable condition.

The Commissary Contract Does Not Ensure that Inmates Will Receive Acceptable Quality Products

Despite a basic, functioning practice for handling complaints by inmates regarding item quality or invoice/item discrepancies, MDOC has no assurance that the vendor will continue to follow this process throughout the duration of the contract because neither the request for proposals nor the contract with Keefe contained requirements for a quality assurance process.

Based on PEER's interviews with commissary staff, inmates are afforded a reasonable opportunity to obtain replacements for items missing from their commissary bags. However, even if MDOC updates its policies regarding quality assurance and complaints (see page 9), the contractor is not bound by departmental policy, but by whatever requirements are specified in the contract. The commissary services contract does not contain specific requirements for a formal complaint process nor does it contain specific quality assurance requirements for commissary goods inspection prior to distribution (e. g., checking for expiration dates). Thus the department cannot assure that the contractor will continue to provide products of acceptable quality and follow a complaint process for inmates.

MDOC's Management of the Inmate Welfare Fund

In this chapter, PEER addresses the following questions:

- What is the Inmate Welfare Fund?
- What money goes into the Inmate Welfare Fund?
- Does MDOC comply with state laws regarding the Inmate Welfare Fund and does the department use the fund to provide for the “benefit and welfare of inmates”?

Statutory Provisions and Sources of Revenues

What is the Inmate Welfare Fund?

MISS. CODE ANN. Section 47-5-128 (1972) established the Inmate Welfare Fund to receive revenues (including net profits from the operation of commissary services) to be used for the “benefit and welfare of inmates.”

MISS. CODE ANN. Section 47-5-109 (1972) requires that funds derived from canteen operations (i. e., commissary sales) be deposited into a Canteen Fund. The Canteen Fund serves as an operating account; certain costs attributable to commissary services are charged as operating costs (e. g., rent, utilities, and employee wages) against profits earned. Any net profits and interest go to the Inmate Welfare Fund, established by MISS. CODE ANN. Section 47-5-158 (1972).

CODE Section 47-5-158 (1) (1972) requires that the Inmate Welfare Fund be used “for the benefit and welfare of inmates in custody of the department.” Section 47-5-158 (7) creates an Inmate Welfare Fund Committee “to administer and supervise the operations and expenditures” from the fund. The CODE specifies that the committee is to be composed of seven members: the Deputy Commissioner for Community Corrections, the Deputy Commissioner of Institutions, the Superintendent of the Parchman facility, the Superintendent of the Rankin County facility, the Superintendent of the Greene County facility, and two members to be appointed by the Commissioner of Corrections.

What money goes into the Inmate Welfare Fund?

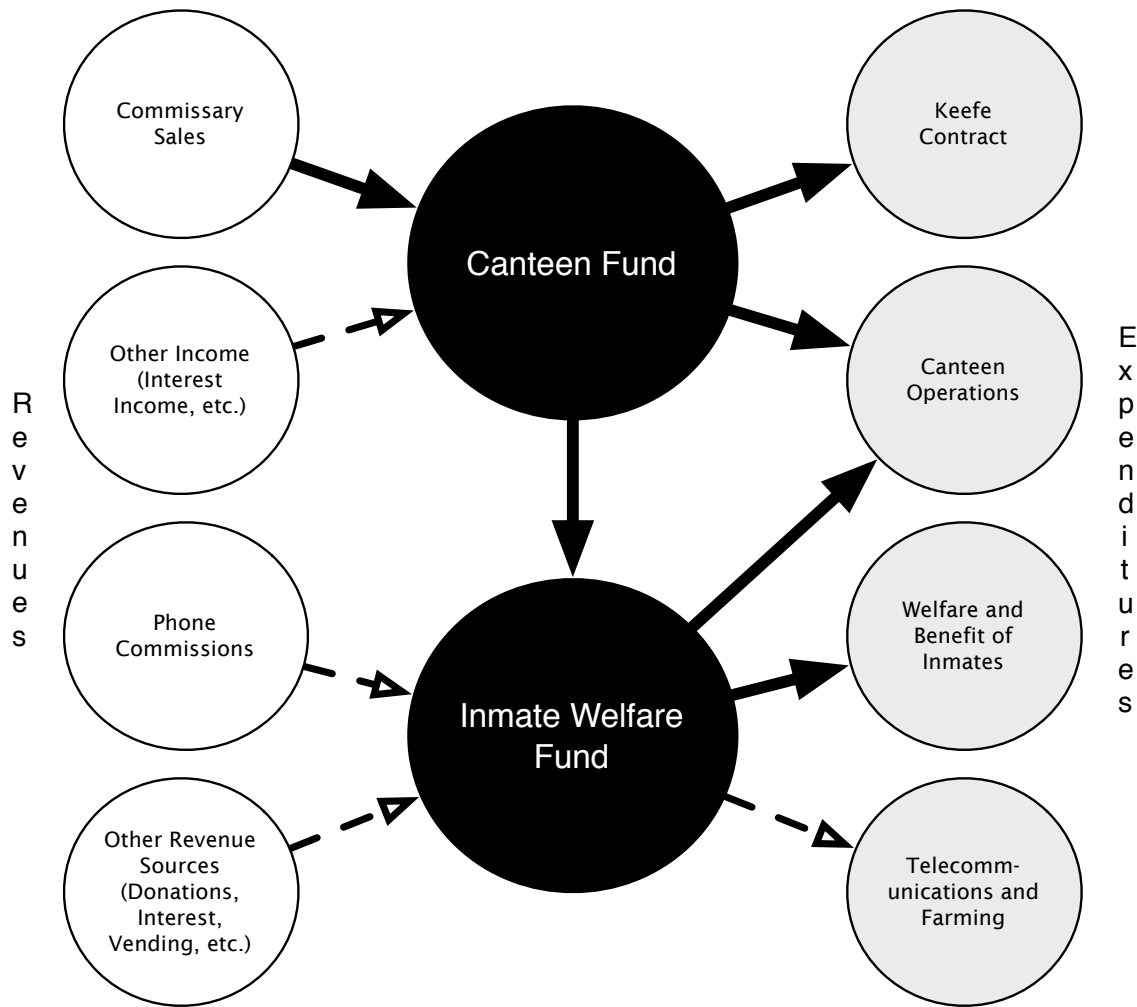
The Inmate Welfare Fund receives net profits from commissary sales, forty percent of MDOC's telephone commissions, interest income, and other revenues as designated by the Commissioner of Corrections. From November 2007 through November 2010, approximately \$12.7 million was made available from these sources to the Inmate Welfare Fund Committee to be used for the benefit and welfare of inmates.

Exhibit 2, page 13, depicts the flow of revenues from commissary sales through the Canteen Fund to the Inmate Welfare Fund. In addition to revenue from commissary sales that flows through the Canteen Fund, the Inmate Welfare Fund receives other revenues, including commissions from deposits into inmate banking via Western Union and CyberSuite (Keefe Commissary, LLC), telephone commissions, interest earned on the IWF, donations, income from vending, and other revenues as may be designated by the Commissioner of Corrections.

Exhibit 3, page 14, shows the distribution of total sales revenues from commissary operations from November 2007 through November 2010. For this period, commissary sales and other income totaled approximately \$24.1 million. Of this amount, MDOC paid approximately \$16.4 million to Keefe for the cost of commissary goods sold and Keefe's share of profits. The remaining approximately \$7.6 million represents MDOC's share of profits from commissary operations. Of this amount, MDOC used approximately \$4.7 million (60%) for canteen operating expenses. This amount includes approximately \$956,630 MDOC expended from the Inmate Welfare Fund for the reimbursement of canteen employee salaries. Finally, the remaining 40% of commissary sales (approximately \$3 million) was made available for the benefit and welfare of inmates.

From November 2007 through November 2010, the total amount from all sources that was made available to the Inmate Welfare Fund Committee for the benefit and welfare of inmates was approximately \$12.7 million.

Exhibit 2: Flow of Revenue: Canteen Fund and Inmate Welfare Fund, November 2007-November 2010



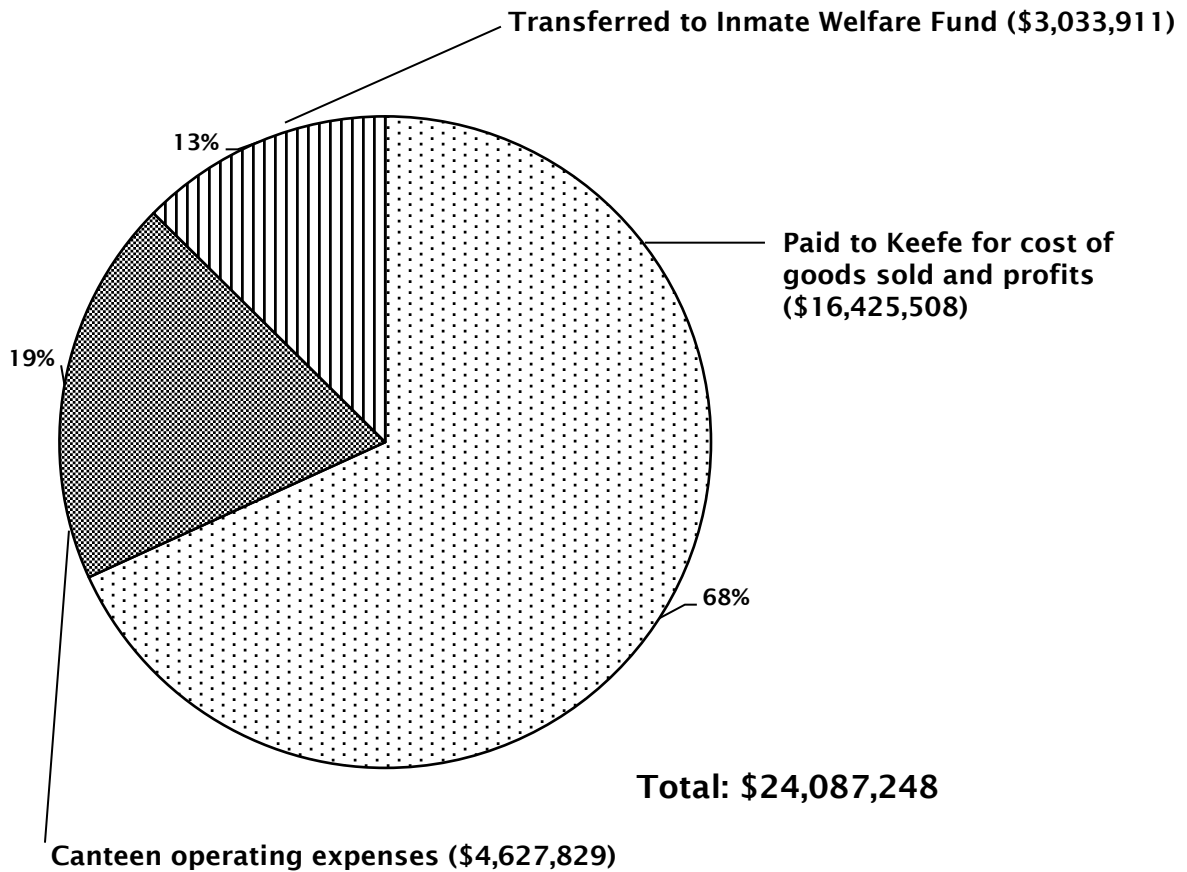
Sales revenue from commissary purchases flows into the Canteen Fund. Other income also comes into the Canteen Fund (e. g., interest income). Money from the Canteen Fund then goes to pay Keefe its share of revenues. The Canteen Fund then pays expenses required to operate commissary services, such as salaries, rent, and utilities. Remaining Canteen Fund money flows to the Inmate Welfare Fund.

Once in the Inmate Welfare Fund, canteen profits are mixed with revenue from other sources, including telephone commissions. One hundred percent of phone commissions is sent to the IWF, but only 40% may be used for IWF purposes, per MISS. CODE ANN. Section 47-5-158 (1972). The remaining 60% is sent to MDOC telecommunications and MDOC farming operations. Salaries for some commissary workers are reimbursed from the IWF (see pages 12 and 22 for discussion of this issue). All remaining funds in the Inmate Welfare Fund are available to be approved by the Inmate Welfare Fund Committee for items for the “benefit and welfare of inmates.”

NOTE: Solid arrows indicate the flow of revenue that is within the scope of this review.

SOURCE: PEER analysis of Mississippi Department of Corrections data.

Exhibit 3: Distribution of Total Commissary Sales to Canteen Fund and Inmate Welfare Fund, November 2007 through November 2010



NOTE: "Total commissary sales" does not include all revenues of the Canteen Fund; other revenue sources such as interest income were outside the scope of PEER's review.

SOURCE: PEER analysis of amounts received from sale of goods in MDOC's commissary services for November 2007 through 2010.

Management of the Inmate Welfare Fund

Does MDOC comply with state laws regarding the Inmate Welfare Fund and does the department use the fund to provide for the "benefit and welfare of inmates?"

Generally, MDOC's actions regarding the Inmate Welfare Fund cannot be described as violating the law. However, PEER determined that:

- *MDOC has improperly reduced the amount of money available to the Inmate Welfare Fund;*
- *MDOC's policies on IWF Committee composition do not reflect the requirements of state law and the actual working membership of the IWF Committee does not comply with either MDOC's policy or with state law;*

- *state law does not include requirements for Inmate Welfare Fund Committee attendance, a quorum for voting, or stakeholder representation and neither MDOC nor the Inmate Welfare Fund Committee has established formal, written policies or rules regarding these issues;*
- *the IWF Committee has no formal, written criteria for making expenditures from the Inmate Welfare Fund; and,*
- *MDOC has only recently complied with statutory requirements for reporting IWF financial information.*

Also, PEER found that conflicting statutory requirements for deposits of the Inmate Welfare Fund make it impossible for MDOC to comply with the law's requirements, thus compromising oversight of the Inmate Welfare Fund.

MDOC Has Improperly Reduced the Amount of Money Available to the Inmate Welfare Fund

Because state law dictates that commissary sales revenues flow through the Canteen Fund to the Inmate Welfare Fund, PEER reviewed Canteen Fund expenditures from November 2007 through November 2010. During that period, MDOC spent approximately \$855,661 from the Canteen Fund for OffenderTrak software maintenance. PEER considers a significant portion of OffenderTrak costs to be an administrative expense of the entire Department of Corrections rather than just commissary services.

As noted on page 11, because the Canteen Fund serves as an operating account for MDOC's commissary services, revenues from commissary sales are deposited to the Canteen Fund, certain costs attributable to commissary services are charged as operating costs (e. g., rent, utilities, and employee wages) against profits earned, and revenues including any net profits and interest then go to the Inmate Welfare Fund as required by CODE Section 47-5-158 (see Exhibit 2, page 13). MISS. CODE ANN. Section 47-5-158 (2) (1972) states:

*There shall be deposited into the Inmate Welfare Fund interest previously earned on inmate deposits, **all net profits from the operation of inmate canteens**, the annual prison rodeo, performances of the Penitentiary band, interest earned on the Inmate Welfare Fund and other revenues designated by the commissioner. All money shall be deposited into the Inmate Welfare Fund as provided in Section 7-9-21, Mississippi Code of 1972.*

(PEER emphasis in bold)

In establishing a relationship in state law between the Canteen and Inmate Welfare funds, the Legislature created a stable funding stream from which the department could make expenditures for the "benefit and welfare" of the inmates. Knowing that this relationship existed, PEER

reviewed Canteen Fund operations for November 2007 through November 2010 to determine how the department expended money in the Canteen Fund. While Canteen Fund expenditures for this period generally appeared to relate to the department's commissary services operations, PEER identified approximately \$855,661 in expenditures from the Canteen Fund for software maintenance of the department's OffenderTrak system.

When MDOC issued the request for proposals (RFP) for a "comprehensive Offender Tracking System," the RFP specified that the system would be required to "support the major functional areas of the MDOC." The RFP then listed thirty-one functional areas that the system would be required to support, including functions such as visitation management, ID/intake processing, and escape tracking. PEER believes that components of OffenderTrak such as these do not relate to commissary services; these are administrative functions of the entire correctional system and represent administrative costs of the department, rather than commissary services.

Although certain components of the OffenderTrak system are related to commissary services, such as inmate banking, MDOC has not determined what portion of costs should be allocated to the functions of OffenderTrak that relate directly to commissary services, but instead attributes 100% of the costs of OffenderTrak software maintenance to the Canteen Fund as an operational expense.

While initial funding for the OffenderTrak system was from inmate telephone commissions (authorized by Senate Bill 2938, 2002 Regular Session), no provision of law allows for continued funding of OffenderTrak by the Canteen Fund. By paying 100% of the cost for software maintenance for OffenderTrak from the Canteen Fund, MDOC has removed approximately \$855,661 over a three-year period from potentially being available for deposit into the Inmate Welfare Fund. PEER considers a significant portion of OffenderTrak costs to be an administrative expense of the entire Department of Corrections, rather than just commissary services.

Problems with the IWF Committee's Membership and Governance

MDOC's policies on IWF Committee composition do not reflect the requirements of state law and the actual working membership of the IWF Committee does not comply with either MDOC's policy or with state law.

As noted on page 11, MISS. CODE ANN. Section 47-5-158 (7) (1972) sets forth the following as the membership of the Inmate Welfare Fund Committee:

- the Deputy Commissioner for Community Corrections;
- the Deputy Commissioner of Institutions;
- the superintendents of the three state public prisons; and,
- two members to be appointed by the Commissioner of Corrections.

Thus state law requires that the committee be composed of seven members for the purpose of authorizing and approving expenditures of the Inmate Welfare Fund.

However, MDOC's Standard Operating Procedures Policy 02-11 states that the IWF Committee is to be composed of five members:

- the Commissioner of Corrections, or his designee;
- the Deputy Commissioner for Community Corrections; and,
- the superintendents of the three state public prisons.

The policy does not reflect accurately the composition required by law for the IWF Committee because it does not require that the Deputy Commissioner of Institutions be part of the committee. Also, the policy does not provide for "two members to be appointed by the Commissioner of Corrections" as members of the IWF Committee, only for "the Commissioner of Corrections, or his designee."

PEER believes that the reason for this contradiction between the requirements for the IWF Committee in MDOC's policy and those stated in CODE Section 47-5-158 (7) is that the CODE was amended in 2002 to increase the IWF Committee's membership from five to seven members, but MDOC did not revise its policy to reflect such.

The actual working membership of the IWF Committee does not comply with either MDOC's policy or with state law. In practice, membership of the IWF Committee has consisted of the Deputy Commissioner of Institutions (who serves as chairman) and the superintendents of the three state public prisons.

State law does not include requirements for Inmate Welfare Fund Committee attendance, a quorum for voting, or stakeholder representation and neither MDOC nor the Inmate Welfare Fund Committee has established formal, written policies or rules regarding these issues.

As noted on page 17, MISS. CODE ANN. Section 47-5-158 (7) (1972) requires that the Inmate Welfare Fund Committee be composed of seven members for the purpose of authorizing and approving expenditures of the Inmate Welfare Fund. The CODE does not address attendance or quorum requirements for voting.

PEER reviewed meeting minutes of the Inmate Welfare Fund Committee for the period of January 2007 through December 2010 and interviewed committee members (i. e., the chairman and three superintendents) to determine the extent of committee members' participation in the voting process. According to interviews with MDOC officials, neither MDOC nor the IWF Committee has established regulations or policies to structure what criteria the board should use for approving items from the IWF (see page 19), holding meetings, the quorum required for voting, attendance, or other similar attributes of an effective organization. PEER's review of IWF Committee minutes for January 2007 through December 2010 shows that the majority of the forty-seven meetings over four years had only three members present (excluding the presence of the non-voting committee secretary).

Furthermore, as noted previously, participation for the majority of the meetings was limited to the superintendents of the facilities and Deputy Commissioner of Institutions, who serves as chairman. PEER found no evidence in the four years of IWF Fund Committee minutes that the committee had included input from inmates or families of inmates in the process of approving expenditures from the IWF for the benefit and welfare of inmates. Compounding this condition is MDOC's history of noncompliance with MISS. CODE ANN. §47-5-158 (5) (requiring the reporting of Inmate Welfare Fund financial data to the Senate and House Corrections Committees, the Legislative Budget Office, and the PEER Corrections Auditor; see page 25). Thus stakeholders outside of the Department of Corrections have had no input into IWF decisions and the Legislature has had little information with which to exercise oversight of Inmate Welfare Fund expenditures.

Availability or participation of a prescribed majority of voting members in the voting process is needed for fostering discussion and for proper stewardship of funds.

The IWF Committee has No Formal, Written Criteria for Expenditures

Although MISS. CODE ANN. Section 47-5-158 (1972) authorizes the Inmate Welfare Fund Committee to promulgate rules and regulations for use of the fund, neither MDOC nor the committee has developed a formal, written definition of “benefit and welfare of inmates” or established formal, written criteria for expenditures from the fund. As a result, the IWF Committee has approved expenditures for some items that might have been questionable in terms of “benefit and welfare of inmates” and expenditures that could have been considered part of the state’s responsibility.

As noted on page 11, MISS. CODE ANN. §47-5-158 (1972) states that the Inmate Welfare Fund “shall be used for the benefit and welfare of inmates in custody of the department.” The section is silent regarding what constitutes “benefit and welfare” of inmates and does not set out what types of items may be purchased with money from the fund. Subsection 7 states that the Inmate Welfare Fund Committee “may promulgate regulations governing the use and expenditures of the fund.”

No MDOC or IWF Regulations or Policies for Expenditure of Inmate Welfare Funds

Neither MDOC nor the Inmate Welfare Committee has established formal, written guidelines for expenditures from the Inmate Welfare Fund.

According to members of the IWF Committee, the committee has not developed formal, written guidelines or policies to define “benefit and welfare,” nor has it established formal, written criteria for what types of items may be purchased with money from the fund. PEER reviewed the IWF Committee’s process for making expenditures from the Inmate Welfare Fund and found that decisions regarding expenditures from the fund are made at three levels without applying any formal, written criteria:

- According to MDOC officials, the correctional facility staffs themselves consider only the broad terms “benefit and welfare” when submitting purchase requests, rather than applying any formal criteria. The MDOC Director of Purchasing stated that facility directors “know the criteria” for what will and will not be funded.
- In compiling purchase requests from the staffs of individual correctional facilities, the MDOC Director of Purchasing uses her own judgment in removing items that she believes would not qualify as enhancing the “benefit and welfare” of inmates. According to the

Chairman of the IWF Committee, she determines which items would “automatically not qualify for funding.”

- IWF Committee members use no additional information (e. g., invoices, quotes) to make purchase decisions other than short descriptions provided on the purchase request forms. They stated that the committee members discuss the merits of the requests at the IWF Committee meetings.

Obviously, the individuals at these three levels who have input into the decision-making process for expenditure of IWF funds do not share the same understanding of the practice regarding appropriate expenditure of the funds.

Guidelines for expenditure and oversight are the most basic of internal controls that are needed for managing public funds. Without expenditure guidelines or criteria to apply when making decisions regarding expenditures, no assurance exists that funds will be spent consistently for the benefit and welfare of inmates.

Attorney General’s Opinion Regarding IWF Expenditures

Based on the conclusions of a 2003 opinion, the Mississippi Attorney General believes that rules and regulations are necessary to a legal expenditure from the Inmate Welfare Fund.

While the text of MISS. CODE ANN. Section 47-5-158 (7) (1972) makes the adoption of rules and regulations for the Inmate Welfare Fund permissive, a 2003 Attorney General’s opinion regarding the use of funds for the construction of a roof over a prison facility noted that expenditures made from the Inmate Welfare Fund are to be made “in conformity with the rules and regulations governing such expenditures.” Thus it would appear that the Attorney General believes that such rules and regulations are necessary to a legal expenditure from the Inmate Welfare Fund (see *Opinion to Lindsey*, May 30, 2003).

Some IWF Expenditures Might be Questioned in Terms of “Benefit and Welfare of Inmates”

The IWF Committee has approved expenditures from the Inmate Welfare Fund for some items that might be questioned in terms of “benefit and welfare of inmates” or items that could be considered part of the state’s responsibility to provide for inmates.

PEER reviewed the Inmate Welfare Fund Committee’s expenditures for the period of November 2007 through November 2010 and noted that some expenditures were made during that period that might be questioned in terms of “benefit and welfare of inmates” or that should have been provided as part of the state’s responsibility for

the care, custody, and control of incarcerated individuals. For example:

- The IWF Committee spent approximately \$5.5 million, or 55% of total Inmate Welfare Fund expenditures from November 2007 through November 2010, for salaries, wages, and contracts of MDOC employees and/or contractors.
- The IWF Committee has been inconsistent in approving and denying purchases from the Inmate Welfare Fund, approving certain types of expenditures at some times and denying the same types of expenditures at other times.

Also, in January 2011, the IWF Committee submitted a purchase request to the Bureau of Fleet Management to purchase two vehicles at a cost of \$28,062. The vehicle justifications noted administrative functions for the vehicles (see page 24 for details), but the money for the purchase of the vehicles was to be paid from the Inmate Welfare Fund.

IWF Expenditures for Salaries, Wages, and Contracts

The IWF Committee spent approximately \$5.5 million, or 55% of total Inmate Welfare Fund expenditures from November 2007 through November 2010, for salaries, wages, and contracts of MDOC employees and/or contractors.

For purposes of this analysis, PEER categorized the IWF Committee's expenditures from the Inmate Welfare Fund for the period of November 2007 through November 2010 into six major categories,⁵ shown in Exhibit 4, page 28. As shown in Exhibit 4, expenditures for salaries, wages, and contracts comprised approximately 55% of all expenditures from the Inmate Welfare Fund for this period. This "salaries, wages, and contracts" category includes some administrative overhead costs for workers that provide support for commissary services and who manage and deliver commissary goods to the inmates, such as commissary clerks and managers.

The category also includes payments for various MDOC employees and/or contractors who provided general support to inmates, including educational instructors, therapeutic specialists, psychologists, a recreational specialist, and librarians. (PEER also notes that on one occasion, reimbursement for the salary of a recreation specialist was denied; see the report section entitled "Inconsistency in Approval of Expenditures," page 22.)

⁵ PEER created these categories as a method of summarizing the expenditures from November 2007 through November 2010.

By using the Inmate Welfare Fund to cover the salaries and wages of department employees and/or contractors, MDOC appears to be relying on the Inmate Welfare Fund to cover general operating costs of the department that PEER believes should be paid from appropriated funds.

While PEER does not dispute whether these employees or contractors are needed or that they benefit inmates, one could take the position that the salaries and wages of these individuals should be paid by MDOC from its appropriated funds rather than from the Inmate Welfare Fund. MISS. CODE ANN. Section 47-5-10 (1972) enumerates the general powers and duties of the Department of Corrections, with the primary responsibility being to provide for the “care, custody, treatment and rehabilitation” of adult offenders. The Legislature appropriates general and special funds annually to the department to carry out its statutory duties. The annual appropriations also include an authorized number of full-time, part-time, and time-limited positions through which the department is to operate.

Additionally, MDOC reimburses wages for facilities’ workers who support commissary services from the Inmate Welfare Fund, totaling \$956,630.42 from November 2007 through November 2010 (see page 12). By using the Inmate Welfare Fund to cover the salaries and wages of employees and/or contractors, MDOC appears to be relying on the Inmate Welfare Fund to cover general operating costs of the department that PEER believes should be paid from appropriated funds.

Without formal, written criteria defining “benefit and welfare of inmates” and specifying what types of expenditures may be made from the Inmate Welfare Fund, MDOC and the IWF Committee could continue to make expenditures from the fund that could be questioned as to whether they are an appropriate use of the fund.

Inconsistency in Approval of Expenditures

For the period of review, the IWF Committee was inconsistent in its approvals and denials of purchases from the Inmate Welfare Fund, approving certain types of expenditures at some times and denying the same types of expenditures at other times.

The IWF Committee approved a wide variety of expenditures from the Inmate Welfare Fund for November 2007 through November 2010. However, the committee was not consistent in the types of expenditures that it approved or denied.

PEER found examples in which a specific type of expenditure was approved in one or more instances, but the same type (or a closely related type) of expenditure was denied in one or more instances, including:

- expenditures for “fans and air conditioning costs” were approved, but expenditures for “heating and cooling costs” were denied on more than one occasion;
- expenditures for “washers,” “dryers,” and “microwaves” were approved, but expenditures for “refrigerators for inmate meds” were denied;
- expenditures for “adult education,” “classroom supplies,” “teacher contracts,” and “classroom/building material” were approved, but expenditures for “supplies for horticulture vo-tech” were denied on more than one occasion.

Although the IWF Committee denied at least forty-one expenditure requests during the review period (i. e., these were recorded in the minutes) in the amount of \$137,296, it is unclear from the limited information presented in the minutes as to why the requests were denied.

Without formal, written criteria defining “benefit and welfare of inmates” and specifying what types of expenditures may be made from the Inmate Welfare Fund, the IWF Committee may continue to be inconsistent in approving or denying expenditures from the fund.

Requests to Purchase Vehicles from the Inmate Welfare Fund

In discussing purchasing practices with agencies’ personnel, PEER discovered the vehicle procurement actions detailed below. While these actions occurred outside of the period of review for other IWF purchases, these actions are discussed in this report because of the considerable interest vehicle purchases garner in policy debates about the use of public resources.

In January 2011, the IWF Committee requested approval from the Bureau of Fleet Management to purchase two vehicles (at a total cost of \$28,062) with money from the Inmate Welfare Fund. The justification was for MDOC administrators to use in traveling statewide on agency business.

According to records of the Department of Finance and Administration’s Bureau of Fleet Management, the bureau received requests in January 2011 for the purchase of two vehicles using money from the Inmate Welfare Fund. The bureau’s records show the following justifications for the vehicles that were to be purchased from the Inmate Welfare Fund:

- Vehicle One: “To be used by Director of Religious Programs for statewide travel in conducting agency business.”

- Vehicle Two: “To be used by the Director of Treatment and Programs for attending meetings statewide on agency business.”

PEER considers vehicles to be a means of accomplishing the daily duties required of one’s position, considering that the justification for each is to attend statewide meetings as any other state government official would be required to do. PEER is not commenting on whether a state-owned vehicle would be warranted to travel in these situations (e. g., to attend meetings statewide or in management of facility treatment programs); however, the individuals that would use these vehicles are in program positions that the state would fund in order to facilitate centralized management of the state’s correctional facilities, regardless of the existence of the Inmate Welfare Fund. Based on this reasoning, PEER considers the use of these vehicles to be an MDOC administrative cost that should be funded by the state rather than an expenditure that should be made from the Inmate Welfare Fund.

As of April 21, 2011, the Bureau of Fleet Management had not approved funds to be released from the Inmate Welfare Fund for purchase of these vehicles.

In January 2011, the IWF Committee also requested approval to purchase a vehicle with money from the Canteen Fund. The vehicle was to be used for administrative purposes of the department (not an appropriate use of the Canteen Fund) and its purchase would ultimately deprive the Inmate Welfare Fund of some of the revenues it should receive.

Similarly, PEER notes that another request was submitted in January 2011 for purchase of a vehicle with \$14,031 from the Canteen Fund. The justification description shows that the vehicle was “to be used by the Director of Fiscal Affairs to provide assistance to the Deputy Commissioner of Administration and Finance and attend statewide budget meetings.”

Because the Canteen Fund is to be used only for operating costs attributable to operation of commissary services, purchasing this vehicle would not be an appropriate use of the Canteen Fund and would ultimately deprive the Inmate Welfare Fund of some of the revenues it should receive (see Exhibit 2, page 13, and discussion on page 15). As of April 21, 2011, the Bureau of Fleet Management had not approved funds to be released from the Canteen Fund for purchase of this vehicle.

MDOC Has Only Recently Complied with Statutory Requirements for Reporting IWF Financial Information

Prior to PEER's review, MDOC did not periodically submit Inmate Welfare Fund financial information to the parties specified by law.

As noted on page 18, MISS. CODE ANN. Section 47-5-158 (5) (1972) requires that MDOC's Deputy Commissioner for Administration and Finance submit to the chairs of the Corrections committees of the Senate and the House of Representatives, the Legislative Budget Office, and the PEER Committee's Corrections Auditor an annual report for the Inmate Welfare Fund. This report is to include a summary of expenditures from the fund by major categories and by individual facility. The law also requires that quarterly consolidated and individual financial statements be submitted to PEER's Corrections Auditor.

During the course of PEER's field work for this review, MDOC officials stated that they had submitted the required information to the parties named in CODE Section 47-5-158 (5). However, prior to that time, MDOC officials had not submitted these reports to the specified parties. According to MDOC officials, previous noncompliance with the requirements of CODE Section 47-5-158 (5) was an oversight.

Although the Department of Corrections has complied with requirements of MISS. CODE ANN. Section 47-5-158 (8) (1972) for annual audits of the Inmate Welfare Fund, the department's lack of compliance with provisions of CODE Section 47-5-158 (5) requiring submission of specific financial information diminishes the oversight capabilities of the Legislature that could be important to public policy decisionmaking regarding the Department of Corrections.

State law does not require that MDOC routinely submit financial information on the Canteen Fund to any third party for oversight. Any inappropriate use of money from the Canteen Fund could ultimately affect the amount of money that flows into the Inmate Welfare Fund.

In a related matter, PEER notes that although state law requires that MDOC provide financial information for the Inmate Welfare Fund to specified third parties for oversight purposes, it does not require that MDOC routinely submit financial information on the Canteen Fund to any third party.

Currently, MDOC contracts with a certified public accounting firm to prepare financial statements for the Canteen Fund. These financial statements are available on request but are not routinely submitted to any of the parties to whom the Inmate Welfare Fund financial

statements are submitted. PEER notes that these financial statements represent a compilation of financial information and do not constitute an audit, which would include a review of MDOC's internal controls for the Canteen Fund.

Thus MDOC spends approximately \$8 million annually for operation of the Canteen Fund with no routine oversight. Any inappropriate use of money from the Canteen Fund could ultimately affect the amount of money that flows into the Inmate Welfare Fund.

Statutory Requirements for Deposits of the Inmate Welfare Fund Contradict Each Other

State law's provisions regarding the deposits of the Inmate Welfare Fund are contradictory, with one subsection requiring that MDOC manage the fund through a bank account and another subsection requiring that these moneys be deposited into the State Treasury. Thus, regardless of the method it uses to manage the fund, the department cannot comply with the law's requirements for IWF deposits and the oversight of the Inmate Welfare Fund is compromised.

As noted on page 11, MISS. CODE ANN. Section 47-5-158 (1972) creates the Inmate Welfare Fund. This section not only creates the fund and gives general guidance as to how the fund is to be used, but also establishes guidance for fiscal management of the fund. Unfortunately, the language of this section is contradictory. Section 47-5-158 states:

*(1) The department is authorized to maintain a **bank account** which shall be designated as the Inmate Welfare Fund. All monies now held in a similar fund for the benefit and welfare of inmates shall be deposited into the Inmate Welfare Fund. This fund shall be used for the benefit and welfare of inmates in the custody of the department.*

*(2) There shall be deposited into the Inmate Welfare Fund interest previously earned on inmate deposits, all net profits from the operation of inmate canteens, the annual prison rodeo, performances of the Penitentiary band, interest earned on the Inmate Welfare Fund and other revenues designated by the commissioner. **All money shall be deposited into the Inmate Welfare Fund as provided in Section 7-9-21, Mississippi Code of 1972.***

(PEER emphasis added in bold)

Whereas Subsection 1 requires the Department of Corrections to manage the Inmate Welfare Fund through a

bank account, Subsection 2 requires that this money be deposited as provided for in CODE Section 7-9-21, which states:

All state officials shall make a detailed report to the State Fiscal Officer and pay into the State Treasury all public funds, as defined in Section 7-7-1, which are required to be paid into the Treasury. Such funds shall be deposited in the State Treasury by the end of the next business day following the day that such funds are collected, except as provided elsewhere in this section. The State Fiscal Officer and the State Treasurer are authorized to establish clearing accounts in the State Treasury as may be necessary to facilitate the transfer of monies to municipalities, counties and other special fund accounts, as provided by law. The detailed report hereinabove required shall be fully satisfied when any revenue-collecting agency on its applications for received warrants has stated the amount of money which it has collected from any source whatsoever without having to supply the names of the taxpayers who had remitted such money. At the request of any state agency, the State Fiscal Officer, with the advice and consent of the State Treasurer, may by regulation provide for other than daily deposits of accounts by that state agency. The State Fiscal Officer, with the advice and consent of the State Treasurer, shall determine the frequency and method of deposit for the agency.

(PEER emphasis added in bold)

In order to comply with CODE Section 47-5-158 (1), MDOC would establish a bank account or accounts for the Inmate Welfare Fund, which it has done; in order to comply with CODE Section 47-5-158 (2) and the mandate of CODE Section 7-9-21, the department could establish a clearing account, but ultimately would have to deposit moneys of the Inmate Welfare Fund into the State Treasury. Thus following the requirements of CODE Section 47-5-158 (1) results in noncompliance with CODE Section 47-5-158 (2). In view of the apparent conflict between these provisions, PEER does not take exception to MDOC's actions to manage the Inmate Welfare Fund through bank accounts, since the CODE contains specific authority for placing this money in a bank account.

While MDOC's use of bank accounts to manage the Inmate Welfare Fund is not in dispute, PEER notes that the Legislature has not given the Department of Corrections a

clear mandate in law for management of the fund. The lack of a clear mandate for choosing one fiscal depository over another has consequences for the degree of management oversight of the money expended for the benefit and welfare of inmates. Funds deposited to the State Treasury may only be disbursed by warrant and warrants may only be drawn in accordance with procedures set by law and the Department of Finance and Administration's rules and procedures. However, funds kept in bank accounts are disbursed by check and have only such oversight as the disbursing agency deems appropriate.

Additionally, funds deposited to Treasury accounts are generally accessible to the agency only through appropriations approved through the legislative process. Funds in bank accounts do not have the same oversight that the appropriations process ensures.

Exhibit 4: Major Categories of Expenditures from the Inmate Welfare Fund, November 2007 through November 2010

Category	Amount	%
Legal	\$ 425,290	4%
Salaries, Wages, Contracts	5,533,834	55%
Education	1,004,803	10%
Recreation	759,216	8%
Appliances and Equipment	519,287	5%
Capital Improv., Maintenance, or Construction	870,637	9%
Miscellaneous	626,162	6%
Multiple Categories	338,317	3%
Total	\$ 10,077,546	100%

NOTE: *Miscellaneous* expenditures are those single event expenditures (e. g., one bulk order of birth certificates in 2009) that could not be classified into any other category. *Multiple categories* expenditures are those expenditures that included items from different categories and were not broken out separately.

SOURCE: PEER analysis of IWF Committee minutes, November 2007 through November 2010.

Recommendations

1. Prior to the expiration of the department's current contract with Keefe Commissary, LLC, the department should utilize a competitive process to procure a commissary contractor for a new contract period.

As part of the process, the department should develop and issue a formal request for proposals (RFP) in order to locate companies interested in providing commissary services to the department. The RFP should clearly articulate the types of services needed by the department and factors by which the department will evaluate and score each offeror's proposal. In addition, the RFP should require offerors to describe their qualifications to provide commissary services to correctional facilities in widely dispersed geographical regions. Offerors should also be required to provide contact information of references that could attest to such qualifications.

The RFP should describe the department's expectations with regard to commissions, pricing, and quality assurance, as described below.

Commissions—The RFP should require offerors to describe fully the proposed commissions to be paid to the department for the opportunity to provide commissary services. Such description should include the basis for computing commissary commissions and the timeframe for remitting commissions to the department.

Pricing—The RFP should require offerors to describe fully their proposed sampling methods for setting prices at the prison canteens to ensure that prices charged by the canteens are reasonable and fair to those purchasing through the canteen system. Should MDOC continue to allow a comparison of convenience store prices to be the basis for setting canteen prices, the RFP should require offerors to specify in their proposals the proposed locations, types, and number of stores and products to be sampled in order to ensure that sufficient data is collected to determine the variation and central tendency of product prices. In establishing individual product prices, the commissary contractor should be required to select the measure of central tendency that best fits the distribution of the sample price data. Should a commissary contractor

determine that prices should be adjusted, the RFP should require an offeror to keep all records pertaining to requested price adjustments, including supporting sample data and calculations of central tendency, and corresponding documentation of the Commissioner's action on the request (approval or disapproval).

Quality Assurance—The RFP should require offerors to describe fully their proposed processes for ensuring the freshness and quality of goods sold through commissary services. Such processes should also include proposed performance indicators with which MDOC could audit or gauge the quality of service provided by the contractor. The RFP should require an offeror to keep all records pertaining to the company's monitoring of its quality assurance processes. In addition, the RFP should require an offeror's quality assurance proposal to include a description of the recourse through which inmates could express their dissatisfaction with quality or delivery of goods purchased from prison canteens.

2. The Legislature should amend MISS. CODE ANN. Section 47-5-158 (1972) to clarify the department's fiscal management responsibilities over the Inmate Welfare Fund. The Legislature should choose one of the following three options:

- *Option One:* Delete the requirement that IWF funds be deposited into the State Treasury. By deleting this requirement, no question could arise as to whether the Department of Corrections can operate the fund through a bank account without the controls customarily applied to the expenditures of public funds.

If this option is selected, the Legislature should further amend MISS. CODE ANN. Section 47-5-158 (1972) to require that the Inmate Welfare Fund Committee adopt rules that set out standards for appropriate use of the fund. Such standards should define what types of items will constitute allowable purchases for inmate welfare.

Additionally, the Legislature should further amend the same section to:

- establish a quorum requirement for the IWF Committee (e. g., four members);
- require the appointment of a person to represent the interests of inmates' families;

- set minimum attendance requirements for committee members;
 - require the committee to adopt a mission statement to guide the development of any policies and procedures the committee adopts regarding the use of the Inmate Welfare Fund; and,
 - require the committee to conduct needs assessments to determine what types of purchases should be made for the benefit of inmates. Such assessments should seek information not only from MDOC personnel, but also from families of inmates, as well as inmates.
- *Option Two:* Delete the provision regarding MDOC's authority to keep the IWF funds in a bank account and require that they be deposited to a special fund from which the Inmate Welfare Fund Committee may make disbursements in accordance with appropriations authority. Under this option, the money would be deposited to a Treasury fund and be withdrawn only on Treasury warrants. The Department of Corrections would have to obtain appropriations authority to make any withdrawals from the fund.

If this option is selected, the Legislature should further amend MISS. CODE ANN. Section 47-5-158 (1972) to require that the Inmate Welfare Fund Committee adopt rules that set out standards for appropriate use of the fund. Such standards should define what types of items will constitute allowable purchases for inmate welfare.

Additionally, the Legislature should further amend the same section to:

- establish a quorum requirement for the IWF Committee (e. g., four members);
- require the appointment of a person to represent the interests of inmates' families;
- set minimum attendance requirements for committee members;
- require the committee to adopt a mission statement to guide the development of any policies and procedures the committee adopts regarding the use of the Inmate Welfare Fund; and,

- require the committee to conduct needs assessments to determine what types of purchases should be made for the benefit of inmates. Such assessments should seek information not only from MDOC personnel, but also from families of inmates, as well as inmates.
 - *Option Three:* Abolish the Inmate Welfare Fund and deposit all funds derived from commissary operations and other IWF revenue sources into the state's general fund. This would entail repealing CODE Section 47-5-158 and amending Section 47-5-109 to provide that canteen profits be deposited to the General Fund.
3. To aid in oversight and public policy decisionmaking regarding MDOC, the Legislature should amend MISS. CODE ANN. Section 47-5-109 (1972) to require MDOC to submit annual financial statements of the Canteen Fund to the Chairs of the House and Senate Corrections committees, Legislative Budget Office, and the Corrections Auditor.
 4. In the event that the Legislature adopts Option One set out above, in compliance with MISS. CODE ANN. Section 47-5-158 (5) (1972), MDOC officials should continue to prepare an annual report for the Inmate Welfare Fund that includes a summary of expenditures from the fund by major categories and by individual facility and should submit the annual report to the chairs of the House and Senate Corrections committees, the Legislative Budget Office, and the Corrections Auditor. Additionally, in compliance with MISS. CODE ANN. Section 47-5-158 (5) (1972), MDOC should continue to prepare quarterly consolidated and individual financial statements and submit them to the Corrections Auditor.
 5. The MDOC should refine its standard operating procedures to include defining permissible costs of operation for the Canteen Fund to ensure that only necessary, canteen-related expenditures are being subtracted from total profit prior to the funds being placed in the Inmate Welfare Fund, as required by MISS. CODE ANN. §47-5-109 (1972).

These expenditure guidelines should address, but not be limited to:

- which canteen employees' salaries and wages may be paid from the fund and the job descriptions for those positions; and,

- specific criteria that would qualify an expenditure as one for a “canteen-related service,” including those related to the canteen warehouse, services that are offered by the MDOC as part of its agreement with a third-party vendor, and items/services necessary to accomplish those duties.

Agency Response



STATE OF MISSISSIPPI
DEPARTMENT OF CORRECTIONS
CHRISTOPHER B. EPPS
COMMISSIONER



May 19, 2011

Max K. Arinder, Executive Director
PEER Committee
Post Office Box 1204
Jackson, MS 39215

Dear Mr. Arinder:

Below is MDOC's response to your draft report dated May 16, 2011 regarding the Department of Corrections' Management of Commissary Services and the Inmate Welfare Fund.

Recommendations

1. Prior to the expiration of the department's current contract with Keefe Commissary, LLC the department should utilize a competitive process to procure a commissary contractor for a new contract period.

As part of the process, the department should develop and issue a formal request for proposals (RFP) in order to locate companies interested in providing commissary services to the department. The RFP should clearly articulate the types of services needed by the department and factors by which the department will evaluate and score each offeror's proposal. In addition, the RFP should require offerors to describe their qualifications to provide commissary services to correctional facilities in widely dispersed geographical regions. Offerors should also be required to provide contact information of references that could attest to such qualifications.

The RFP should describe the department's expectations with regard to commissions, pricing, and quality assurance, as described below.

Commissions — The RFP should require offerors to describe fully their proposed commissions to be paid to the department for the opportunity to provide commissary services. Such description should include the basis for computing

commissary commissions and the timeframe for remitting commissions to the department.

Pricing — The RFP should require offerors to describe fully their proposed sampling method for setting prices at the prison canteens to ensure that prices charged by the canteens are reasonable and fair to those purchasing through the canteen system. Should MDOC continue to allow a comparison of convenience store prices to be the basis for setting canteen prices, the RFP should require offerors to specify in their proposals the proposed locations, types, and number of stores and products to be sampled in order to ensure that sufficient data is collected to determine the variation and central tendency of product prices. In establishing individual product prices, the commissary contractor should be required to select the measure of central tendency that best fits the distribution of the sample price data. Should a commissary contractor determine that prices should be adjusted, the RFP should require an offeror to keep all records pertaining to requested price adjustments, including supporting sample data and calculations of central tendency, and corresponding documentation of the Commissioner's action on the request (approval or disapproval).

Quality Assurance — The RFP should require offerors to describe fully their proposed processes for ensuring the freshness and quality of goods sold through commissary services. Such processes should also include proposed performance indicators with which MDOC could audit or gauge the quality of service provided by the contractor. The RFP should require an offeror to keep all records pertaining to the company's monitoring of its quality assurance processes. In addition, the RFP should require an offeror's quality assurance proposal to include a description of the recourse through which inmates could express their dissatisfaction with quality or delivery of goods purchased from prison canteens.

Commissions: As you point out in your report, MDOC is not required to bid these service although we are not opposed to procuring inmate commissary services through an RFP process. MDOC will consider requesting proposals for these services prior to the expiration of the existing contract with several specific specifications namely:

- ***Potential vendors will not be responsible for receiving and maintaining inmate funds. Potential commissary service vendors would prefer to control inmate funds and would pay higher commissions for this opportunity. Control of inmate funds by a third party will not be in the best interest of MDOC or the inmate.***
- ***Potential vendors must have a proven history of providing commissary services to over 15,000 inmates to a similar number of facilities in a similar sized geographic area.***
- ***Potential vendors must have or provide substantial proof that it currently maintains or plans to establish a centrally located bagging facility in Mississippi.***

Pricing: A survey method for determining fair pricing for items sold in the commissary already is in place; however, MDOC will consider enhancing the documentation of survey during the next contract period.

Quality Assurance: Quality assurance of the commissary vendor's performance as well as the quality delivered product is already firmly established. Deficiencies in vendor performance and product quality are detected and reported by both MDOC staff through use of incident reports and by inmates through the administrative remedy program (ARP). All incident reports and ARP request are resolved on a timely basis.

2. The Legislature should amend MISS. CODE ANN. Section 47-5-158 (1972) to clarify the department's fiscal management responsibilities over the Inmate Welfare Fund. The Legislature should choose one of the following three options:

Option One: Delete the requirement that IWF funds be deposited into the State Treasury. By deleting this requirement, no question could arise as to whether the Department of Corrections can operate the fund through a bank account without the controls customarily applied to the expenditures of public funds.

If this option is selected, the Legislature should further amend MISS. CODE ANN. Section 47-5-158 (1972) to require that the Inmate Welfare Fund Committee adopt rules that set out standards for appropriate use of the fund. Such standards should define what types of items will constitute allowable purchases for inmate welfare.

MDOC agrees with this recommendation.

Additionally, the Legislature should further amend the same section to:

- establish a quorum requirement for the IWF Committee (e. g., four members);
- require the appointment of a person to represent the interests of inmates' families;
- set minimum attendance requirements for committee members;
- require the committee to adopt a mission statement to guide the development of any policies and procedures the committee adopts regarding the use of the Inmate Welfare Fund; and,
- require the committee to conduct needs assessments to determine what types of purchases should be made for the benefit of inmates. Such assessments should seek information not only from MDOC personnel, but also from families of inmates, as well as inmates.

These items should be addressed with the Committee on Rules & Regulations.

Option Two: Delete the provision regarding MDOC's authority to keep the IWF funds in a bank account and require that they be deposited to a special fund from which the Inmate Welfare Fund Committee may make disbursements in accordance with appropriations authority. Under this option, the money would be deposited to a Treasury fund and be withdrawn only on Treasury warrants. The Department of Corrections would have to obtain appropriations authority to make any withdrawals from the fund.

If this option is selected, the Legislature should further amend MISS. CODE ANN. Section 47-5-158 (1972) to require that the Inmate Welfare Fund Committee adopt rules that set out standards for appropriate use of the fund. Such standards should define what types of items will constitute allowable purchases for inmate welfare.

Additionally, the Legislature should further amend the same section to:

- establish a quorum requirement for the IWF Committee (e.g., four members);
- require the appointment of a person to represent the interests of inmates' families;
- set minimum attendance requirements for committee members;
- require the committee to adopt a mission statement to guide the development of any policies and procedures the committee adopts regarding the use of the Inmate Welfare Fund; and, require the committee to conduct needs assessments to determine what types of purchases should be made for the benefit of inmates. Such assessments should seek information not only from MDOC personnel, but also from families of inmates, as well as inmates.

The IWF Fund has operated with as a non-appropriated fund with committee oversight and has been fully audited on an annual basis for over twenty years. Requiring warrants to be processed through the treasury will not provide much additional oversight that the committee and an annual audit don't already provide. MDOC is not in agreement with the recommendation that an inmate family representative be placed on the IWF Committee.

Option Three: Abolish the Inmate Welfare Fund and deposit all funds derived from commissary operations and other IWF revenue sources into the state's general fund. This would entail repealing CODE Section 47-5-158 and amending Section 47-5-109 to provide that canteen profits be deposited to the General Fund.

This option does not take into account the need for an Inmate Welfare Fund coupled with the fact that the inmates are funding the account through inmate purchases.

3. To aid in oversight and public policy decision making regarding MDOC, the Legislature should amend MISS. CODE ANN. Section 47-5-109 (1972) to require MDOC to submit annual financial statements of the Canteen Fund to the Chairs of

the House and Senate Corrections committees, Legislative Budget Office, and the Corrections Auditor.

We are not opposed to implementing this practice with or without new legislation.

4. In the event that the Legislature adopts Option One set out above, in compliance with MISS. CODE ANN. Section 47-5-158 (5) (1972), MDOC officials should continue to prepare an annual report for the Inmate Welfare Fund that includes a summary of expenditures from the fund by major categories and by individual facility and should submit the annual report to the chairs of the House and Senate Corrections committees, the Legislative Budget Office, and the Corrections Auditor. Additionally, in compliance with MISS. CODE ANN. Section 47-5-158 (5) (1972), MDOC should continue to prepare quarterly consolidated and individual financial statements and submit them to the Corrections Auditor.

MDOC is in agreement with this recommendation.

5. The MDOC should refine its standard operating procedures to include defining permissible costs of operation for the Canteen Fund to ensure that only necessary, canteen-related expenditures are being subtracted from total profit prior to the funds being placed in the Inmate Welfare Fund, as required by MISS. CODE ANN. §47-5-109 (1972).

These expenditure guidelines should address, but not be limited to:

- which canteen employees' salaries and wages may be paid from the fund and the job descriptions for those positions; and,
- specific criteria that would qualify an expenditure as one for a "canteen-related service," including those related to the canteen warehouse, services that are offered by the MDOC as part of its agreement with a third-party vendor, and items/services necessary to accomplish those duties.

Due to the oversight in applying the amended IWF law to our policy, MDOC will name two (2) additional members to the IWF committee effective June 1, 2011.

MDOC will establish more specific written guidelines relating to expenditures that are for the benefit and welfare of the inmate. However, MDOC stands by the approval of all expenditures by the IWF committee as being appropriate during the period reviewed by PEER. Further, we do not consider that any of the approved expenditures supplant any general or special funds appropriated by the legislature. We do not intend to make expenditure guidelines too specific in order not to overly restrict the committee from using their judgment. Only expenditures related to educational programs, legal assistance, recreational activities or unreimbursed costs associated with treatment programs will be approved by the IWF committee. This is the criteria that has been

used by the committee when approving IWF expenditures in the past and we will continue to use these general guidelines. These guidelines will be written into policy.

Likewise, MDOC will establish more specific guidelines relating to expenditures from the canteen fund. During the PEER review, MDOC documented that the overhead charged to the Canteen Fund was appropriate after taking into consideration the time of correctional officers and case managers involved in the inmate banking/commissary process. If MDOC does not pay these costs through profits generated in the Canteen Fund it will be forced to pay these costs from general funds. Mississippi Code Section 47-5-109 allows for reasonable overhead to be charged to the Canteen Fund. Considering this overhead has been conservatively calculated and documented, MDOC can see no reason to pass these costs to general funds.

Additionally, MDOC is in disagreement with PEER's opinion that software maintenance costs associated with the Offender Management System be charged to general funds. The purchase of the software was authorized by the legislature originally and it is MDOC's opinion that annual maintenance costs associated with this software be paid from either the Canteen Fund or the Inmate Welfare Fund.

Thank you for the opportunity to respond to this report.

Sincerely,



Christopher B. Epps, Commissioner
Mississippi Department of Corrections

CBE/RM:vlc

PEER Committee Staff

Max Arinder, Executive Director
James Barber, Deputy Director
Ted Booth, General Counsel

Evaluation

David Pray, Division Manager
Linda Triplett, Division Manager
Kim Cummins
Brian Dickerson
Lonnie Edgar
Barbara Hamilton
Matthew Holmes
Kevin Mayes
Angela Norwood
Jennifer Sebren

Editing and Records

Ava Welborn, Chief Editor/Archivist and Executive Assistant
Tracy Bobo

Administration

Rosana Slawson
Gale Taylor

Information Technology

Larry Landrum, Systems Analyst

Corrections Audit

Louwill Davis, Corrections Auditor