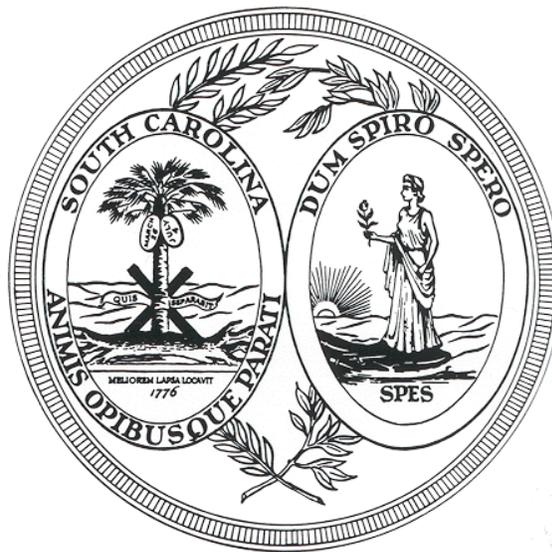


LAC

Report to the General Assembly

March 2000

**A Review of the
Human Affairs
Commission's
Hiring Practices and
Timeliness of Investigations**



Legislative Audit Council

1331 Elmwood Ave., Suite 315
Columbia, SC 29201
(803) 253-7612 VOICE
(803) 253-7639 FAX

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Audits by the Legislative Audit Council conform to generally accepted government auditing standards as set forth by the Comptroller General of the United States.

Copies of all LAC audits are available to the public at no charge.

A Review of the Human Affairs Commission's Hiring Practices and Timeliness of Investigations
was conducted by the following audit team.

Audit Team

Senior Audit Manager
Jane I. Thesing

Senior Auditor
Perry K. Simpson

Associate Auditor
Cynthia B. Piper

Typography
Candice H. Pou
Maribeth Rollings Werts

Senior Legal Counsel
Andrea Derrick Truitt

LAC

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Synopsis

Members of the General Assembly requested that we conduct a limited review of the South Carolina Human Affairs Commission (SHAC). We were asked to review the timeliness of SHAC's investigations and to determine whether the commission's hiring practices have been in compliance with law.

A primary function of the Human Affairs Commission is to receive, investigate and resolve complaints alleging unlawfully discriminatory employment and housing practices. In federal FY 98-99 SHAC completed 1,158 employment discrimination investigations.

- The average length of time to complete an employment discrimination investigation increased 23% from 146 days to 180 days over the past five years, and the inventory of pending cases has increased.
- For the last three federal fiscal years, SHAC has not met its goal of completing 60% of investigations within 180 days and has not regularly monitored its progress in meeting the goals stated in its annual accountability reports.

However, SHAC's employment discrimination investigations have been more timely than those conducted by the federal Equal Employment Opportunity Commission (EEOC).

In FY 98-99 SHAC also completed 37 fair housing investigations. We did not identify significant problems with the timeliness of fair housing investigations. For the past three years, the average length of time to complete an investigation has been below the statutory limit of 100 days.

The Human Affairs Commission has generally been in compliance with state laws and regulations that govern the hiring process. However, SHAC's contract for a full-time lobbyist should be re-evaluated. Also, SHAC has not complied with statutory requirements for reporting lobbying expenditures.

Synopsis

Introduction and Background

Audit Objectives

Members of the General Assembly requested that we conduct an audit of the South Carolina Human Affairs Commission (SHAC). We were asked to review the timeliness of the commission's investigations and to determine whether the agency has been in compliance with state laws and regulations regarding hiring.

Scope and Methodology

Our review was limited to SHAC's hiring practices and timeliness of investigations. We did not review other aspects of the commission's operations. The period of review was generally FY 97-98 through December 1999.

We reviewed SHAC's performance with regard to state law on hiring, fair employment, and housing investigations. We also considered federal criteria for timeliness of investigations conducted by the Equal Employment Opportunity Commission (EEOC) and Department of Housing and Urban Development (HUD). We used the following sources of information from the commission:

- Case investigation files.
- Investigation reports.
- Employee personnel files.
- Contracts, correspondence, and other administrative records.

We conducted interviews with SHAC officials and officials with other South Carolina state agencies. We also talked with EEOC and HUD officials. We performed limited testing of the computerized investigation reports we used; although there were some inaccuracies in the reports, we concluded they did not have a material effect on our results.

We reviewed SHAC's management controls over hiring and completion of investigations. We used random nonstatistical sampling to verify computerized data about investigations. This audit was conducted in accordance with generally accepted government auditing standards.

Background

The South Carolina Human Affairs Commission (SHAC) is responsible for administering and enforcing laws to prevent and eliminate unlawful discrimination. These laws include:

- South Carolina Human Affairs Law (§1-13-10 *et seq.*).
- South Carolina Fair Housing Law (§31-21-10 *et seq.*).
- Equal Enjoyment and Privileges to Public Accommodations Act (§45-9-10 *et seq.*).

Created in 1972, SHAC is governed by a board of 15 commissioners who serve three-year terms. There are two members from each Congressional district appointed by the Governor with the advice and consent of the Senate, and three members at large appointed by the Governor. As of February 2000, the commission had three vacancies and four members serving with expired terms.

The commission's office is located in Columbia. In FY 99-00, SHAC had 57 FTE positions. The agency's budget was \$3,074,508, of which 75% was state general funds. SHAC receives federal and other funds that are primarily payments for investigations from the U.S. Equal Employment Opportunity Commission and the U.S. Department of Housing and Urban Development.

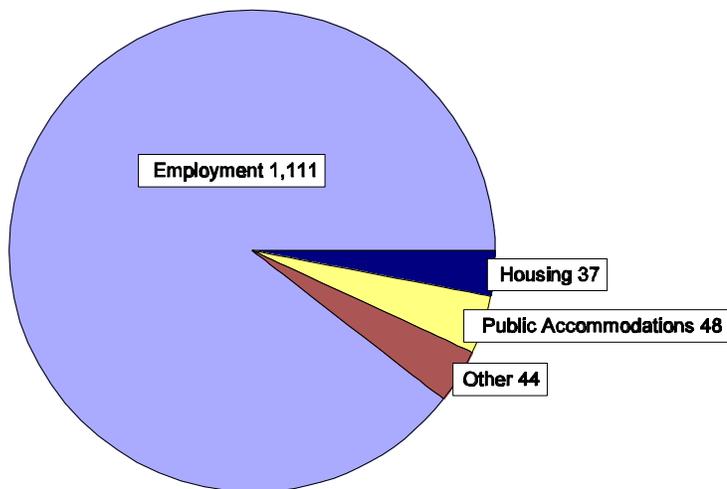
The majority of SHAC's resources are allocated to its compliance division. This division serves as the investigative and enforcement arm of the commission. The commission also offers consultative services. These include providing assistance to state agencies with the development and implementation of their affirmative action plans and programs, training employers to prevent workplace discrimination, and supporting local community relations councils.

Compliance Activities

The primary duties of the compliance division are to receive, investigate and resolve complaints alleging unlawfully discriminatory employment and housing practices. The complaints closed by SHAC for FY 98-99 are shown in Graph 1.1.

The South Carolina Human Affairs Law prohibits discriminatory employment practices. Complaints alleging unlawful discrimination may be filed on the basis of race, color, sex, age, religion, national origin, and disability. Under federal law, the Equal Employment Opportunity Commission (EEOC) is the agency responsible for enforcing laws relating to employment discrimination. The EEOC has entered into contracts with SHAC since 1975 that allow SHAC to investigate employment discrimination complaints and provide for payment by the EEOC. The EEOC is notified when complaints are filed with SHAC, and the EEOC reviews the cases after SHAC completes its investigations.

**Graph 1.1: Complaints Closed
FY 98-99**



Source: S.C. Human Affairs Commission.

In FY 98-99, SHAC completed 1,111 employment discrimination investigations. Seventy-four percent of these cases resulted in a “no cause” finding. The total monetary value of the settlements resulting from other employment cases closed in FY 98-99 was more than \$800,000. SHAC has 25 staff assigned to receive, mediate, and investigate employment discrimination complaints.

The 1989 South Carolina Fair Housing Law makes it illegal to discriminate in housing because of race, color, religion, sex, national origin, physical or mental handicaps, or familial status (families with children). SHAC receives and investigates complaints about housing discrimination. Since 1995, SHAC has been certified to conduct investigations for the federal Department of Housing and Urban Development (HUD). HUD and SHAC have a cooperative agreement under which HUD reimburses the commission for each complaint processed and also provides funds for administrative, enforcement, and training costs.

SHAC completed 37 fair housing investigations in FY 98-99. Findings of “no cause” resulted in 41% of these cases. The total monetary value of settlements made in fair housing cases in FY 98-99 was approximately \$4,000. There are five employees in the fair housing investigations unit.

SHAC also investigates complaints filed under the state Equal Enjoyment and Privileges to Public Accommodations Act. Under contract with the S.C. Department of Health and Human Services, the agency has monitored compliance with state and federal civil rights laws by service providers who receive Medicaid and social services block grant funding.

Audit Results

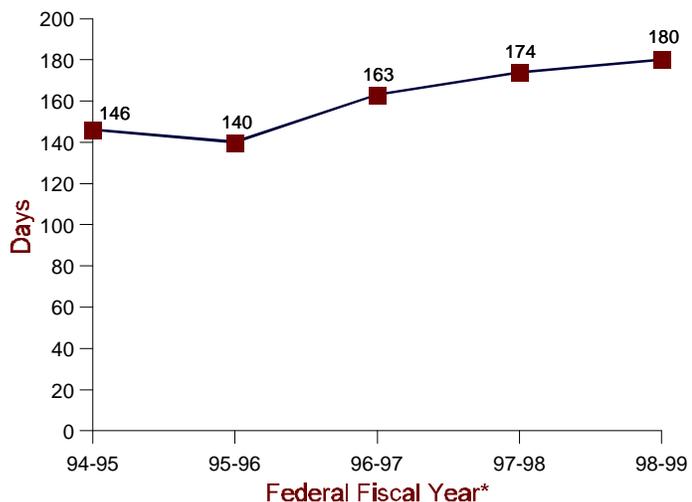
Timeliness of Investigations

We were asked to review the timeliness of SHAC’s investigations into alleged employment and housing discrimination. We found that the average length of time to complete an employment discrimination investigation increased 23% from 146 days to 180 days over the past five years (see Graph 2.1), while the average duration of fair housing investigations has not changed significantly. However, SHAC’s employment discrimination investigations have been more timely than those conducted by the federal EEOC.

Employment Discrimination Complaints

In federal FY 98-99, SHAC completed 1,158 investigations into complaints alleging employment discrimination. Graph 2.1 shows the increase in the average length of time needed to complete an investigation.

Graph 2.1: Average Time to Complete an Investigation



* October 1 through September 30.

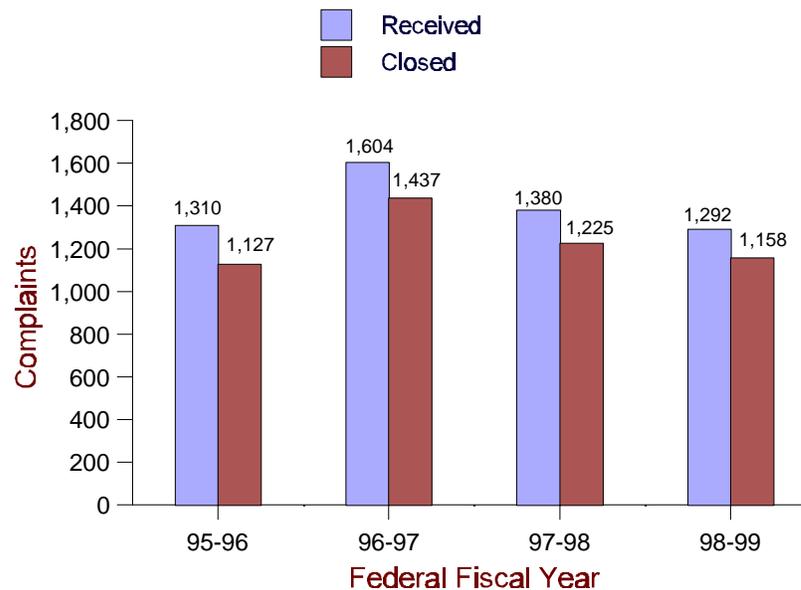
Source: S.C. Human Affairs Commission.

We found that SHAC’s inventory of pending cases has also increased. The number rose from 683 at the end of FY 95-96 to 768 at the end of FY 98-99, an increase of 12%.

The reasons for the increase in investigative time are not clear. We interviewed agency staff and obtained information from the agency’s computer system. Agency staff cited several potential reasons for the increase in investigative time. These included an increase in the number of complaints received, an increase in the number of private sector employer complaints (which, according to staff, take longer to process than public sector employer complaints), lack of staff, and increased staff turnover.

However, we did not find an overall increase in the number of complaints received. Rather, the number of complaints received has fluctuated. Graph 2.2 shows the number of complaints received and closed in the last four federal fiscal years. Over this period of time, the number of cases closed has also fluctuated, varying directly with the number of cases received.

Graph 2.2: Complaints Received and Closed



Source: S.C. Human Affairs Commission.

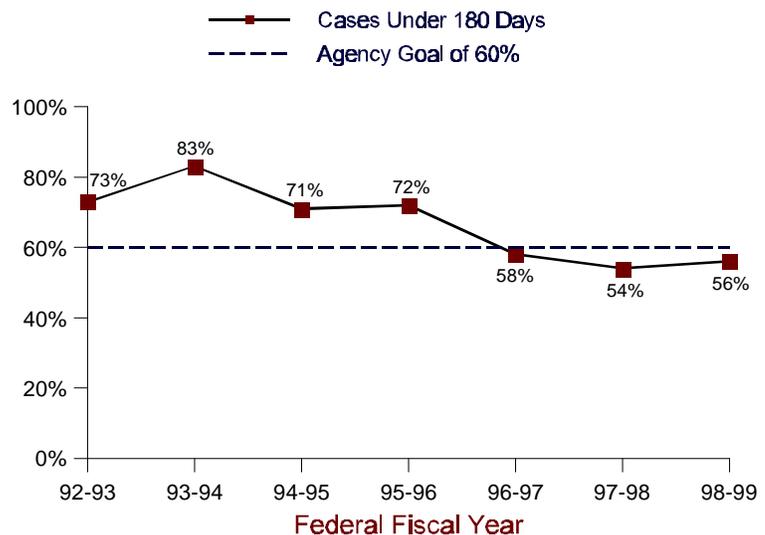
We also did not find evidence that an increase in the number of private sector complaints has contributed to the length of time needed to close a case. Based on data from the last three federal fiscal years, the amount of time needed to close a case involving a private sector employer is the same as or less than the amount needed to close a complaint involving a public sector employer. In addition, we did not find that lack of staff or staff turnover had contributed significantly to the increase in investigative time. The number of staff assigned to investigate complaints has not varied significantly, and turnover has not been excessive.

Monitoring of Timeliness Goals

SHAC has not monitored its performance in meeting the goals set forth in its annual state accountability reports. SHAC's goal is to complete 60% of all employment discrimination investigations within 180 days. Further, SHAC aims to have a 30-day turnaround in the intake stage and a 30-day turnaround in the mediation stage of the complaint process.

We found that SHAC has not completed 60% of its investigations within 180 days for the last three federal fiscal years. During these years, the percentage of investigations completed within 180 days ranged from 54% to 58% (see Graph 2.3).

Graph 2.3: Percent of Cases Completed in Less Than 180 Days



Source: S.C. Human Affairs Commission.

According to an agency official, SHAC has not monitored whether it is meeting its timeliness goals. In October of 1999, SHAC staff began reporting to its commission on the status of meeting these goals for employment investigations. Improved monitoring could also help the agency determine why the time needed to complete investigations has increased.

Although SHAC has not met its timeliness goals, it has closed the number of cases projected in its contracts with EEOC. The EEOC's contract with SHAC provides that SHAC will be paid for a certain number of cases closed each year. This number is based on the number of cases closed by SHAC the previous year and the availability of federal funds. SHAC does not receive payment for any cases closed above the contracted number. Table 2.1 shows the number of cases SHAC closed and the number for which SHAC received payment for the last three federal fiscal years.

Table 2.1: Contracted and Actual Closures Federal FY 96-97 through FY 98-99

Federal Fiscal Year	Contracted Closures	SHAC Closures
96-97	1,031	1,437
97-98	1,072	1,225
98-99	1,167	1,158

Source: S.C. Human Affairs Commission.

Employment discrimination complaints may be filed at the SHAC office in Columbia or at the EEOC's offices in Greenville and Charlotte, N.C. Generally, a complaint is investigated by whichever agency receives the complaint. The EEOC directly investigated and closed 699 cases in South Carolina in federal FY 98-99. The EEOC has a goal of processing complaints within 180 days. However, according to EEOC officials, the agency is not meeting this goal, and its investigations are taking longer to complete than SHAC's.

Strategies for Improving Timeliness

SHAC has requested a \$1.4 million increase in state funds and the addition of 33 FTEs in its FY 00-01 budget request. According to the budget request, 15 of the 33 positions would be for additional investigators. However, the request for more investigators is based on a projected increase in complaints rather than an effort to shorten the length of investigations. According to SHAC officials, there will be more cases because of the proposed changes to SHAC's law and increased outreach in areas of the state where there have not been many complaints. Also, the agency would like to do more on-site visits in investigations, which would slow the process. Without more analysis it is difficult to project how the addition of more investigators would affect the timeliness of investigations.

There are other methods SHAC could use to improve productivity in the processing of employment discrimination complaints. For example, SHAC could tighten its intake screening process so that fewer complaints are referred to investigation. Over the last five federal fiscal years, an average of more than 70% of employment discrimination investigations have resulted in a "no cause" finding.

Recommendations

1. The Human Affairs Commission should implement a formal system for monitoring and reporting its progress in meeting its accountability goals.
2. In order to reduce investigator caseloads, the Human Affairs Commission should consider tightening the screening of complaints at intake.

Fair Housing Investigations

We did not identify significant problems with the timeliness of fair housing investigations. The average time it takes the commission to complete an investigation has remained consistent over the past five years (see Graph 2.4). Except for FY 95-96, SHAC has generally averaged around 80 days to complete an investigation. The number of cases closed has been relatively consistent with a downward trend over the past five years (see Graph 2.5). The pending inventory of housing discrimination cases has not increased over this period.

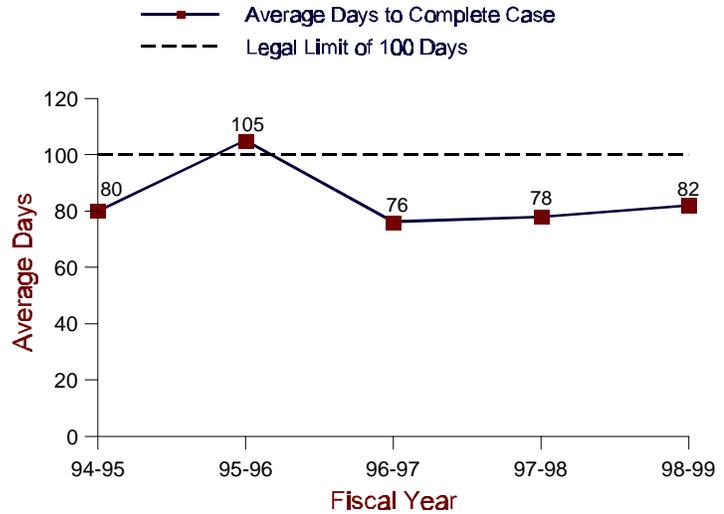
There is a statutory limit on the duration of fair housing investigations. According to S.C. Code §31-21-120 (E):

The investigation must be completed in no more than one hundred days If the commission is unable to complete the investigation within one hundred days, it shall notify the complainant and respondent in writing of the reasons for not doing so.

Over the past five years, SHAC exceeded 100 days in 20% to 27% of its investigations, except for FY 95-96 when 48% lasted longer than 100 days. We reviewed the files of all cases closed in FY 97-98 and FY 98-99 where the investigation lasted longer than 100 days and found evidence that proper notifications were sent in 14 of the 16 files reviewed.

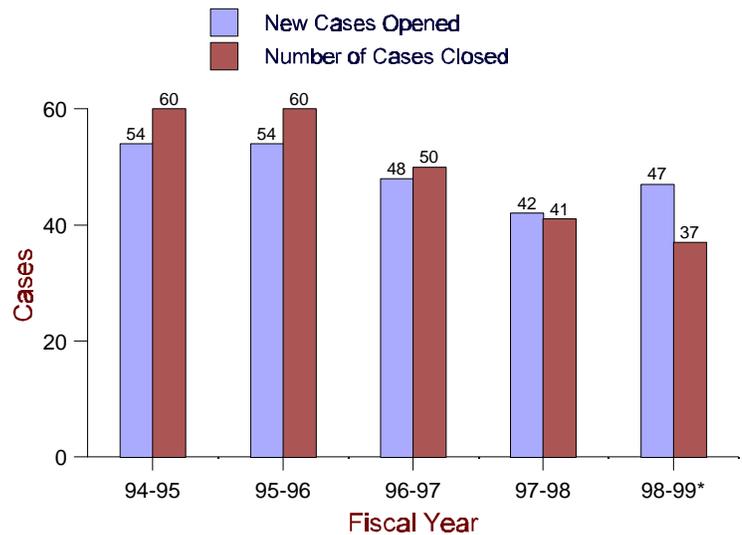
According to a HUD official, there are many legitimate reasons why an investigation can take longer than 100 days, and it is common for investigations to take longer. Although we could not obtain reliable comparative statistics on the length of fair housing investigations in other jurisdictions, there was no evidence to suggest that SHAC's investigations have been untimely.

Graph 2.4: Duration of Fair Housing Investigations



Source: S.C. Human Affairs Commission.

Graph 2.5: Fair Housing Investigations



*SHAC transferred 12 cases to HUD during this year.

Source: S.C. Human Affairs Commission.

Hiring Practices

We found the Human Affairs Commission's hiring practices to be generally in compliance with state laws and regulations. Individual employee files were reviewed for the 19 persons hired or promoted since July 1997. State human resource regulations require state agencies to post all vacant positions with the S.C. Employment Security Commission and the Office of Human Resources (OHR) State Job Information Center. According to agency staff, the Human Affairs Commission posts every position both internally and on the Office of Human Resources Internet site. This Internet system became operational in June 1998. If the agency posts the job on the Internet through the State Job Information Center, it is also forwarded to the Employment Security Commission. We found evidence that all the positions were posted internally; however, due to lack of documentation, we could only confirm that five of the eight positions advertised since June 1, 1998, were also posted on the Internet. There is no requirement that agencies maintain documentation of job postings; however, this documentation could be useful to resolve any questions about the hiring process.

We also reviewed the 19 files to determine whether the employees hired met minimum education and experience requirements for their positions. Evidence indicated that all the employees met these requirements. However, SHAC does not require documentation to support applicants' educational attainments. Copies of transcripts were found in only 1 of the 19 files reviewed. Accepting self-reported information about education does not provide an adequate control to ensure that applicants are properly qualified. Also, requiring documentation could help ensure that all applicants are given equal consideration.

State human resource regulations also require that for every employee hired above the minimum salary for the position or promoted with a salary increase greater than 15%, the agency must have permission from OHR and justification for the salary. In all cases where the Human Affairs Commission hired an individual above the minimum or promoted an employee with more than a 15% increase, we found OHR permission and justification in the individual's file.

Recommendations

3. The Human Affairs Commission's human resource manager should maintain documentation of all job postings, including those posted on the Internet.
 4. The Human Affairs Commission should require transcripts or official school documents to verify the educational attainment of applicants.
-

Agency Lobbyist

In our review of agency hiring practices we found that the Human Affairs Commission has contracted for a full-time lobbyist. In August 1999, SHAC contracted to pay the lobbyist \$60,000 (\$5,000 per month) for a 12-month period. The State Ethics Act does not restrict or limit the use of state funds for lobbying activities. However, the use of state funds for lobbying, particularly on a 12-month basis, is a questionable allocation of agency resources.

The lobbyist employed by the commission is a former SHAC board member who resigned from the board in 1998. SHAC employed him as a consultant beginning in January 1999 for two one-month contracts. He was paid \$4,995 for each contract, for a total of \$9,990. One of these contracts was for lobbying, and the other was "to seek, obtain, establish and develop" a SHAC office in Charleston. However, as of January 2000, the commission does not have a Charleston office.

The primary focus of the lobbyist's FY 99-00 contract is to encourage the General Assembly to increase the agency's budget and amend the Human Affairs Law. SHAC has requested an additional \$1.4 million appropriation for FY 00-01. The requested increase is for 33 new positions and increased office space (see p. 9). The Human Affairs Commission currently has an executive assistant for external affairs and other staff who could provide information to the General Assembly. While we identified no procurement problems with the lobbyist's contracts, SHAC could have used these resources to address other agency needs.

Reporting Requirements

SHAC has not complied with statutory requirements for reporting lobbying expenditures. State ethics law (§2-17-5 *et seq.*) requires state agencies to regularly report these expenditures to the State Ethics Commission. The Human Affairs Commission did not meet the October 12 deadline for reporting expenditures for the period April 1 – September 30, 1999. After two notifications from the Ethics Commission, SHAC reported these expenditures in January 2000 and paid a fine of \$340 for late filing.

In addition, section 72.62 of the FY 98-99 appropriations act and section 72.60 of the FY 99-00 appropriations act require agencies to report all contracts for public relations, communications, and legislative strategy services to the Ethics Commission by June 30 of each year. SHAC did not report its January 1999 contract for lobbying as required.

Recommendations

5. The Human Affairs Commission should re-evaluate its need for a full-time lobbyist.
6. The Human Affairs Commission should ensure that it complies with all reporting requirements related to its expenditures for lobbying.

Appendix

Appendix



STATE OF SOUTH CAROLINA



HUMAN AFFAIRS COMMISSION

Willis C. Ham, Ph.D.
Commissioner

2611 Forest Drive, Suite 200, Post Office Box 4490
Columbia, South Carolina 29240
(803) 737-7800 FAX (803) 253-4191

Telephone Device for the Deaf
(TDD) (803) 253-4125
To file complaints dial (803) 737-7800
or 1-800-521-0725 (In-State Only)

March 16, 2000

Ms. Jane I. Thesing
Senior Auditor Manager
Legislative Audit Council
1331 Elmwood Avenue, Suite 315
Columbia, South Carolina 29201

Dear Ms. Thesing:

The enclosed statement is being submitted to provide clarification of portions of your review of the South Carolina Human Affairs Commission's hiring practices and timeliness of investigations.

As we submit this response to your final draft, I would like to thank you and your team for the courtesy that you extended to me and my staff throughout the auditing process.

Sincerely,

Willis C. Ham, Ph.D.
Commissioner

Enclosure

Final Response to the Review of the Human Affairs Commission's Hiring Practices and Timeliness of Investigations by the Legislative Audit Council

March 14, 2000

TIMELINESS OF INVESTIGATIONS

Employment Discrimination Complaints

The State Human Affairs Commission (SHAC) resolved (completed) 1,171 employment discrimination investigation cases in FY 98-99. Even though the Legislative Audit Council (LAC) determined that SHAC did not meet its “**self-imposed**” (**non-statutory**) goal of processing 60 percent of cases completed under 180 days, the Agency did come within two (2) percent in FY 96-97; within six (6) percent in FY 97-98; and within four (4) percent in FY 98-99. The following factors, some unpredictable, affected the **slight** shortfalls in reaching our goal:

I. Increased Charge Receipts

A 31 percent increase in charge receipts over the past five (5) years.

II. Increased Pending Inventory

To assist the Equal Employment Opportunity Commission (EEOC) in reducing its substantial backlog, SHAC accepted a transfer of 263 backlogged, aged cases from EEOC during the 4th quarter of FY 95 and the 1st quarter of FY 96. This greatly increased the pending inventory and impacted the FY 96-97 resolution rate. These aged

cases had been in EEOC's backlogged inventory for some time and were old cases when we received them. Aged cases require considerably more time to investigate because of the difficulty in contacting charging parties and witnesses, as well as difficulty for respondents to retrieve and provide information. The average processing time for those aged cases was 241 days.

III. Turnover in Investigative Staff

The Agency experienced a significant turnover in staff.

In FY 96-97, fifty percent of the investigative staff had two (2) years or less investigative experience. The average processing time was **171 days for new investigators** compared to **115 days for investigators with five (5) years or more experience.**

IV. Enhanced Focus on Thoroughness and Quality

The SHAC determined to enhance its attention to thoroughness in investigations. This meant additional efforts to contact witnesses, verify respondents' reasons and closer scrutiny during the entire SHAC review process.

Monitoring of Timeliness Goals

It was recommended by the LAC that SHAC improve its monitoring of program goals and consider other strategies, such as screening cases more tightly during the intake process.

All incoming cases at the Intake level are screened to eliminate untimely, facially self-defeating and non-jurisdictional complaints. Complaints are carefully scrutinized and accepted for investigation only if they present a prima facie cause of action. The SHAC may not subjectively deny a complainant's right to file a charge that

meets lawful requirements. To do so may well constitute a violation of Section 1-13-90(d) of the South Carolina Human Affairs Law and subject the Agency to writs of mandamus.

SHAC consistently monitors its program goals with weekly and monthly management meetings. All division directors are required to submit and discuss reports on all active cases in each investigator's inventory. The Agency's General Counsel attends and participates in all monthly meetings.

The following factors should be considered in assessing SHAC's pending inventory:

1. By the LAC's own findings, according to EEOC officials, its investigations take longer to complete than SHAC's.
2. According to the EEOC, the average age of pending inventory for all Fair Employment Practices Agencies (FEPA's) nationwide is 537 days.
3. The average age of SHAC's pending inventory was 135 days for FY 97-98.
4. The average age of SHAC's pending inventory as of December 98-99 was 129 days.
5. SHAC is the largest FEPA in the Charlotte District, and is the only FEPA in South Carolina.

Hiring Practices

The LAC found the SHAC's hiring practices to be generally in compliance with state laws and regulations. They found evidence of every position being posted both internally and on the Office of Human Resources' Internet site. **There is no requirement that agencies maintain documentation of job postings.**

As far as verification of educational attainment is concerned, although it is not a requirement, we will seek to have applicants provide verification as a prerequisite for an interview.

Agency Lobbyist

The Agency's lobbyist (Governmental Liaison) should not be addressed as a **"hiring practice."** This individual is covered by the State's Procurement Code and **is not an employee** of the agency.

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