Alabama Department of Examiners of Public Accounts

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Why are we here today?

- To serve the Public
- Education is important
- Being aware of potential issues helps you to combat them before they happen

Regulatory Entities & State Government

- 3 Branches of Government:
    - Judicial
    - Legislative
    - Executive
        - Boards, Agencies and Commissions

Alabama Department of Examiners of Public Accounts

- **Who are we?**
  - Legislative Auditing Agency
  - Check on Executive Functions

- **What do we do?**
  - Conduct Audits, Examinations and Reviews
  - Assist in Special Investigations
  - Provide Guidance to State and Local Entities
  - Provide Guidance to Lawmakers

Why Do Regulatory Entities Exist?

- ❑ Public Protection
- ❑ Qualifications
- ❑ Monitoring
- ❑ Appropriate Action

Alabama Legislative Sunset Committee

- Reviews Certain State Boards, Agencies and Commissions
- ADEPA conducts reviews of each of the entities up for sunset
- Sunset Committee is provided copy of review conducted by ADEPA
- Hearing is conducted for each of the entities reviewed
- Sunset Committee then decides the appropriate action to take concerning the entity. Action can range from the following:
  - Sunset the entity and offer legislation changes and solutions
  - Require annual review
  - Allow entity to continue with no change
- Committee may vote to have a sunset review conducted of any state entity

What do Sunset reviews entail?

- Not a Legal Compliance Examination
- Conducted to evaluate the effectiveness and efficiency of an entity and if the entity is conducting business in furtherance of its mission
- Findings and Significant Issues
- Allows a chance for board members, staff, licensees and the public to have a voice in the process

Today's Agenda

- ❖Legal Update
- ❖Internal Controls
- ❖Common Audit Findings

Legal Issues & Common Findings

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Training Roadmap

- ❑ Regulatory Authority
- ❑ Administrative Procedures Act
- ❑ Open Meetings Act
- ❑ Public Records Law
- ❑ Public Contracts
- ❑ Travel

WARNING!!!

- This manual/presentation:
  - -CANNOT cover every situation
  - -Is NOT all inclusive of every aspect of the law
  - -IS a general overview
- If you have a question…
  - -Seek Advice from your Legal Counsel
  - -Seek Advice or Opinion from the Attorney General's Office or the Alabama Ethics Commission
    - -www.ago.alabama.gov
    - -www.ethics.alabama.gov

Regulatory Authority

Sources of Regulatory Authority:

- Regulatory practice in the name of the State <u>cannot</u> exist without specific authority granted in the law.
  - Federal Law
  - State Law
  - Administrative Rules and Regulations
  - Federal and State Rules
  - Departmental Rules
  - Opinions
  - Executive Orders

Board & Commission Specific Statutes:

Each Board and Commission is created by an enabling statute.

- ❑ Intent for Creation
- ❑ Qualifications and Compensation of Members
- ❑ Purpose, Power, and Duties
- ❑ Fees, Qualifications, and CLE for Licensure
- ❑ Rules and Creation thereof under the APA
- ❑ Fines: Criminal and Administrative
- ❑ Penalties for Non-Compliance

Finding 1 - Compensation

- A member received board member compensation in the amount of $250.00 per day for each day spent in active service of the Board. During the examination period the member received a total of $11,300.00 for board member compensation. The member is also a full-time faculty member of a State Community College. As a full-time employee of the Community College, the member was not entitled to the $250.00 per day board pay according to the *Code of Alabama 1975*, Section 36-6-3 and *Attorney General Opinion 2010-061*.
- The *Code of Alabama 1975*, Section 36-6-3 states, "Salary of officer or employee filling, etc., more than one office, position, etc., states "Wherever the duties of more than one office, position or employment shall be filled, performed or discharged by one officer or employee, such officer or employee shall only receive the salary named for the highest paid office, position or employment so filled, performed or discharged."
- According to *Attorney General Opinion* 2010-061, "A person appointed to serve on the Board of Funeral Service, who is employed as a faculty member in a state junior college system, does not hold two offices of profit. Although a person may serve in the stated positions simultaneously, that person may only receive compensation at the rate named for the highest paying position."

Finding 2 - Unauthorized Fee

The Board adopted an administrative rule to charge licensees a $100 late renewal fee. The late renewal fee is not authorized by the Board's enabling statutes.

The *Code of Alabama 1975,* Section 34-00-00(a) provides that Board issued licenses expire annually, on October 1st. A license may be renewed on or before November 1st with no penalty due the Board. After November 1st a license which has expired may, within five years of its expiration date, be renewed on the payment to the Board of a fee set by the Board for each year or part thereof during which the license was ineffective and the payment of a restoration fee set by the Board. The statute does not provide for a late fee.

The Attorney General's Office has opined that fees that are not authorized by statute cannot be charged.

Attorney General Opinion Number 87-222 dated June 23, 1987, concluded that, "Where the Legislature established a sufficiently definite policy, standard or rule an administrative agency may be empowered to deal with the issuing of a license or permit and to fix reasonable fees for such issuance; where the Legislature has not established such a sufficiently definite policy, rule or standard the administrative agency may not be empowered to deal with such issuing of licenses or permits or establishing of fees."

E-Verify

§ 31-13-15, *Ala. Code* 1975

- No business entity or employer in AL shall knowingly employ, hire for employ, hire for employment, or continue to employ an unauthorized alien to perform work in Alabama.
- Every business entity or employer in AL <u>shall</u> enroll in E-Verify and verify the employment eligibility of the employee through E-Verify.
- Keep a copy of the MOU between Bd./Comm. and the Dept. of Homeland Security

Finding - E-Verify

- The Board did not verify four employees employment eligibility through E-Verify by the third business day after the employees started work.
- The *Code of Alabama 1975*, Section 31-13-15(b) states, "Effective April 1, 2012, every business entity or employer in this state shall enroll in E-Verify and thereafter, according to federal statutes and regulations governing E-Verify, shall verify the employment eligibility of the employee through E-Verify. A business entity or employer that uses E-Verify to verify the work authorization of an employee shall not be deemed to have violated this section with respect to the employment of that employee."
- Furthermore, the *E-Verify User Manual, Section 2.2* states, "E-Verify cases must be created no later than the third business day after the employee starts work for pay."

Systematic Alien Verification for Entitlements Program (SAVE)

§ 31-13-7, *Ala. Code* 1975

- "An alien who is not lawfully present in the U.S. and who is not defined as an alien eligible for public benefits [under federal law] shall not receive any state or local public benefits."
- "Each agency… of the state shall verify with the fed. gov't the "lawful presence" in the U.S. of each alien who applies for state or local benefits."
- "No official of this state…shall attempt to indep. make a final determination of whether an alien is lawfully present…shall be verified by the fed. gov't."
- "Any United States citizen applying for state or local public benefits…shall sign a declaration that he or she is a United States citizen."

Finding - SAVE

- The Commission has not taken action to comply with the state law that requires its licensees to be either United States Citizens or lawfully present in the United States. The Commission does not ask applications to sign a declaratory statement and provide proof of citizenship/legal alien status on new license or renewal forms. The Commission has not enrolled in the Federal Systematic Alien Verification for Entitlements (SAVE) program used to verify documentation presented by non-citizen applicants.
- The *Code of Alabama 1975*, Section 8-0A-5 (12) (b) (3) (c) of the Commission's licensing law provides that, "An applicant for registration shall be a citizen of the United States or, if not a citizen of the United States, a person who is legally present in the United States with appropriate documentation from the federal government."
- More specifically, Section 31-13-29(c)(1) of the Alabama Immigration statute requires that, "Any person entering into a public records transaction or attempting to enter into a public records transaction with this state or a political subdivision of this state shall be required to demonstrate his or her United States citizenship… or his or her lawful presence in the United States… An alien's lawful presence in the United States may be verified through the Systematic Alien Verification for Entitlements program operated by the Department of Homeland Security.

QUESTIONS???

Administrative Procedures Act

APA: Purpose

- Provides Legislative oversight of powers and duties delegated to administrative agencies;
- Increases public accountability of administrative agencies;
- Simplifies government by assuring a uniform minimum procedures;
- Increases public access to governmental information;
- Increases public participation in the formulation of administrative rules;
- Increases the fairness of agencies in their conduct of contested case proced.;
- Simplify the process of judicial review of agency action.

What is an Admin. Rule?

- "Each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency…"
- A rule includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule or by federal statute or by federal rule or regulation;…

§ 41-22-3(9), *Ala. Code* 1975

Finding - Administrative Rule

- The Commission approved new policies and procedures regarding the appointment, attire and performance of officials at Athletic events. These "policies and procedures" fall within the definition of a rule but were not formally adopted using the proper administrative procedures for rule-making.

APA: Adoption of Agency Rules

- In addition to other rulemaking requirements, each agency shall:
  - Adopt as a rule a description of its organization;
  - Adopt rules of practice;
  - Make available rules, written statements of policy, final orders decisions and opinions for public inspection and copying.

§ 41-22-4, *Ala. Code* 1975

APA: Notice of Intent

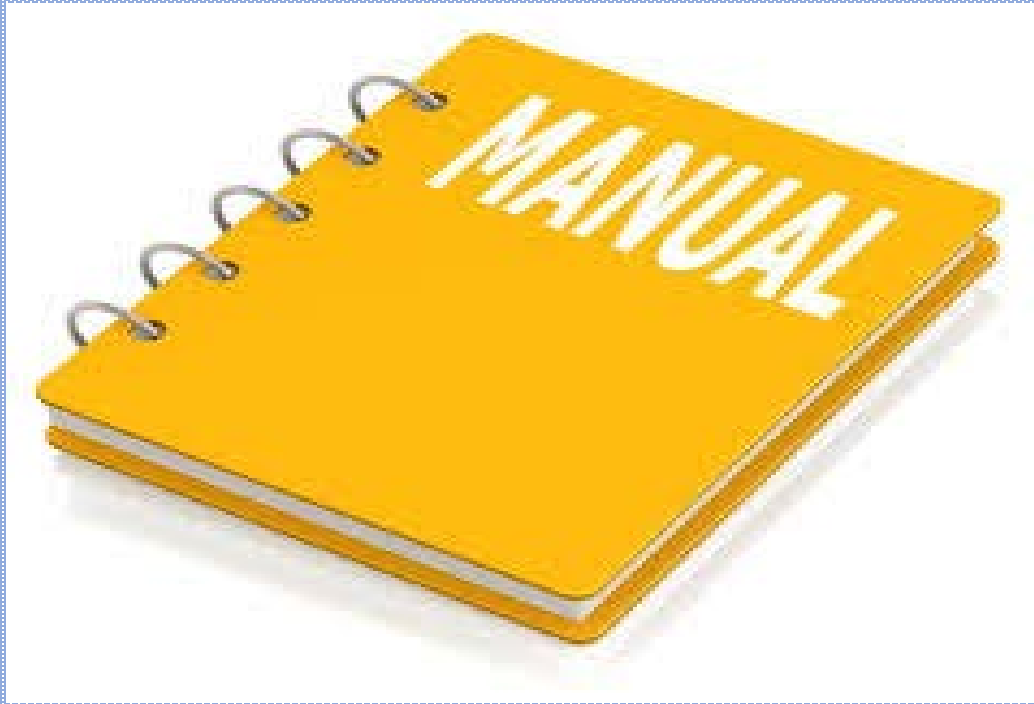
- Prior to adopt, amend. or repeal of any rule, Agency <u>shall</u> give at least 35 Days' notice of intended action.
- The notice <u>shall</u>:
  - State whether the rule relates to or affects litigation where agency is a party;
  - Statement of either the terms or substance of intended action;
  - Specify the notice period (not <35days; not > 90days);
  - Specify the place where, and the manner in which interested persons may present views;
  - Given to Chairman of Joint Comm. on Admin. Reg. Review;
  - Be mailed to all persons who pay the cost of such mailing; and
  - Published, prior to action thereon, Ala. Admin. Monthly

APA: Emergency Rule

- If an agency finds that an immediate danger to the public health, safety, or welfare requires adoption of a rule upon fewer than 35 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule.
- The rule shall become effective immediately upon filing of the rule and a copy of a written statement of the reasons with LSA and the secretary of the agency.
- Such rule is effective for a period of not longer than 120 days and is not renewable.

APA: Rule Specifics & General Instructions

- Legislative Reference Service Admin. Rule Manual
  - www.alabamaadministrativecode.state.al.us/docs/instructionmanual.pdf



QUESTIONS???

Open Meeting Act

§ 36-25A-1, Ala. Code 1975

The Law

"The deliberative process of governmental bodies shall be open to the public during meetings (as defined by this act). Except for executive sessions … or as otherwise expressly provided by other federal or state statutes, all meetings of a governmental body shall be open to the public and no meetings of a governmental body may be held without providing notice (as defined in this act)."

"No executive sessions are required by this Act to be held under any circumstances. Electronic communications shall not be utilized to circumvent any provision of this Act."

§ 36-25A-1, *Ala. Code* 1975

Simplified Aspects of the Law

- All "meetings" in which "governmental bodies" meet to "deliberate" must be open to the public.

- Under the OMA, the only exception to the open meeting is an "executive session."

- No meeting---even an emergency meeting--- can be properly held under the OMA without proper notice.

- Electronic communications, such as teleconferencing, cannot be used to circumvent the OMA.

"Governmental Body" - § 36-25A-2(4)

- Who is legal bound to follow the OMA?
  - SHORT ANSWER: <u>YOU</u>

- "All boards, bodies, and commissions of the executive and legislative departments of the state…which expend or appropriate public funds;"
- "All multimember governing bodies of departments, agencies, institutions, and instrumentalities of the executive and legislative departments of the state… including, without limitation, all corporations and other instrumentalities whose governing boards are comprised of a majority of members who are appointed or elected by the state;"
- "All quasi-judicial bodies of the executive and legislative departments of the state; and all standing, special, or advisory committees or subcommittees of, or appointed by, the body."

"Meeting" - § 36-25A-2(6)a

- What must be open to the public?
  - Prearranged gathering of a quorum of governmental body or committee or subcommittee thereof which is set by law or operation of law.
  - Prearranged gathering of a quorum of a governmental body or a quorum of a committee or subcommittee thereof to exercise the powers to approve the expenditure of public funds.
  - Gathering of a quorum of a governmental body or a committee or subcommittee thereof to deliberate specific matters that, at the time of the exchange, the participating members expect to come before the full governmental body, committee, or subcommittee at a later date.

<u>NOT</u> A "MEETING" - § 36-25A-2(6)B

- Quorum of a governmental body, committee, or subcommittee attends:
  - -Social Gatherings;
  - -Conventions, Conferences, or Training Programs;
  - -Press Conferences, Media Events, or Association Meetings.

- Occasions when a quorum of a subcommittee, committee, or full government body gathers, in person or electronically, with state or federal officials to report, obtain information, or seek support for issues of importance to the sub., comm., or body.

- Any other gathering in which the body discusses specific matters that the body does not expect to come before the body at a later date

"Deliberation" - § 36-25A-2(1)

- What must be discussed openly during the meeting?
  - Any exchange of info. or ideas among a quorum of members of a subcommittee, committee, or full governmental body intended to arrive at or influence a decision.
  - Applies to current discussions or discussion about future issues.
  - Does NOT apply to "executive session" discussions.

"Quorum" - § 36-25A-2(12)

- How many members are necessary?
  - General Rule: "a majority of the voting members."
  - Includes "Newly Elected" or "Appointed Members"

Before the Meeting: Notice

- Who must give notice?
  - Generally, all governmental bodies that come under the OMA must give notice.

Notice: The Requirements

- Absolutely required:
  - Time, Date, and Place of Meeting

- Required when available: Preliminary Agenda
  - Once created, must be posted as soon as practicable in the same location or manner as the notice for the meeting.

  - If a preliminary agenda is not created, must post notice containing a general description of the "nature and purpose" of the meeting.

  - A governmental body may discuss at a meeting additional matters not included in the preliminary agenda

§ 36-25A-3(c), *Ala. Code* 1975

When is notice Required?

7 Day Notice

- Pre-arranged gathering of a quorum of governmental body (or comm. or sub.) required by law to be held at a certain time or place.
  (§ 36-25A-2(6)a.1 Meetings)

§ 36-25A-3(a), *Ala. Code* 1975

When is Notice Required?

1 Day Notice

- Pre-arranged gathering of a quorum of governmental body to exercise powers to possess or approve expend. of public funds.

  (§ 36-25A-2(6)a.2 Meeting)

- The gathering, whether or not it was prearranged, of a quorum of comm., sub., or gov't body to deliberate matters the body members expect to come before the body at a later date or time.

  (§ 36-25A-2(6)a.3 Meeting)

§ 36-25A-3(b), *Ala. Code* 1975

When is Notice Required?

1 Hour Notice

- Emergency Meetings and Resignations

§ 36-25A-3(b), *Ala. Code* 1975

How must notice be Given?

- Governmental Bodies with Statewide Jurisdiction

  - <u>Required</u>:
    -Notice to the Secretary of State

  - <u>Optional</u>:
    -"In additional manner" desired by the body

§ 36-25A-3(a)(2), Ala. Code 1975

During the Meeting:

- Adoption of Rules of Procedure
  - Unless otherwise provided by law, must adopt a set of parliamentary procedures that will guide each open meeting.

§ 36-25A-5(a), *Ala. Code* 1975

During the Meeting:

- Voting
  - All votes must be made during open or public portion "unless otherwise permitted by law."
  - <u>No Secret Ballots</u>: Secret ballots are strictly forbidden.

    -Individual voice voting preferred.
  - <u>No voting in Executive Session</u>: Even if the body can enter Exec. Session, *all* votes must be conducted openly.*

§ 36-25A-5(b), *Ala. Code* 1975

During the Meeting:

- Recording of the Body

  - <u>Required</u>:
    -Date, Time, and Place
    -Members present and absent
    -Action taken during the meeting

§ 36-25A-5(b), *Ala. Code* 1975

During the Meeting:

- Recording by Media and Public
  - All person in attendance can openly record the meeting
    - Tape recorder, video camera, photographic camera
  - The recording cannot "disrupt the conduct of the meeting."
  - The public and media *do not* have a right to record executive sessions.

§ 36-25A-(6), *Ala. Code* 1975

E-Communications: Brief Overview.

- Who qualifies?
  - Members of a governmental body;
  - Comprised of members from two or more counties.

- Tele. or Video Conf. or other similar comm. equip.
  (all persons part. to hear each other at the same time)

- Participation by such means shall constitute presence in person at the meeting for all purposes, <u>except for the establishment of a quorum</u>.

§ 36-25A-5.1, *Ala. Code* 1975

E- Communications: Exceptions

- Members of the following government bodies prohibited from electronic participation:
  - -Board of Pardons and Parole
  - -Public Service Commission
  - -Alabama Ethics Commission
  - -Any State board or Agency acting in quasi judicial capacity (employee actions or promulgation of rules pursuant to stat. auth.)
  - -Any State Board, Agency, or Gov't Body conducting hearings (loss of licensure or professional censure)

§ 36-25A-5.1(d), *Ala. Code* 1975

Executive Sessions:

- Calling an Executive Session:

1. Convene an Open Meeting
2. Motion – Stating the Reason for Exec. Session
3. Written or Oral Declaration (if necessary)
4. Open Voting
5. Statement Concerning Reconvention (if and when approx.)

§ 36-25A-7, *Ala. Code* 1975

Executive Session: 9 Reasons

1. Job Performance, General Reputation and Character, Physical Condition, Professional Competence, and Mental Health;
2. Formal Complaints or Charges Against an Individual or Legal Entity;
3. Discussions with the Government Body's Attorney;
4. Security Plans and Measures;
5. Criminal Investigation and the Identity of an Undercover Agent or Informer;
6. Negotiations to Buy/Sell/Lease Real Property;
7. Preliminary Negotiations in Trade Competition;
8. Negotiations Between The Body and A Group of Public Employees; or
9. Discuss and Vote Upon A Public or Contested Case Hearing*

Finding 1- Improper Executive Session

- There were three instances in which the Board had improper discussions in executive session. In two instances, the Board entered executive session to discuss applicants for the Executive Director position. In one instance, the Board entered executive session to discuss the staff members impacted by proposed personnel actions. In all three instances, the Board should not have entered into executive session to hold these discussions because all of the Board's employees are required to file a Statement of Economic Interests with the State Ethics Commission.
- The *Code of Alabama 1975*, Section 36-25A-7(a)(1) states "However, except as provided elsewhere in this section, discussions of the job performance of specific public officials or specific public employees may not be discussed in executive session if the person is an elected or appointed public official, an appointed member of a state or local board or commission, or a public employee who is one of the classification of public employees required to file a statement of economic interests with the Alabama Ethics Commission pursuant to Section

Executive Session (finding cont.)

- *The Code of Alabama* 1975, Section 36-25-14. Except as provided elsewhere in this section, *the salary, compensation, and job benefits of specific public officials or specific public employees may not be discussed in executive session*."
- Furthermore, Attorney General Opinion 2006-088 allows an executive session to be called for the purpose of interviewing current public employees for promotion to fill vacant positions *when those positions do not require the interviewee to file a Statement of Economic Interests with the State Ethics Commission*.

After the Meeting:

- Suggested Steps:
  - Public Record of the Open Meeting.
    -The body must maintain and publish the minutes it is required to take during the meeting.
    -They must be published "as soon as practicable after approval."
  - Know and Post Future Notice for next meeting.

Finding 1- Minutes

- The Commission did not maintain accurate records of its meeting, excluding executive sessions, recording the presence or absence of members as required by the Open Meetings Act. The Commission held seventeen meetings from October 1, 2015 through January 26, 2018 with the following errors noted:
- The Commission did not record the time of adjournment for all seventeen meetings.
- The Commission did not accurately record who was present or absent for seven meetings.
  - The minutes of six meeting did not record one commission member as either present or absent.
  - The minutes of one meeting did not record three commission members as either present or absent.

Minutes Finding (cont.)

- Minutes for Commission meetings held on June 25, 2016 and July 15, 2017 did not record who was present or absent or the time the meeting was called to order.

- The Alabama Open Meetings Act, specifically, the *Code of Alabama 1975*, Section 36-25A-4 states, "A governmental body shall maintain accurate records of its meetings, excluding executive sessions, setting forth the date, *time*, place, *members present or absent*, and action taken at each meeting." [Emphasis added]

QUESTIONS???

Public Records Law

What is a Public Record?

- "[A]ll written, typed or printed books, papers, letters, documents and maps made or received in pursuance of law by the public officers of the state…or other subdivisions of government in the transactions of public business…"

  (§ 41-13-1, *Ala. Code* 1975).

- "Such a record as is reasonably necessary to record the business and activities required to be done or carried on by a public officer so that the status and condition of such business and activities can be known by our citizens."

  Stone v. Consolidated Pub. Co., 494 So.2d 678, 681 (Ala. 1981)

Who is a Public Officer?

- Short Answer: YOU!

"A public officer or servant, as used in [the Act], is intended to and shall include, in addition to the ordinary public offices, departments, commissions, bureaus and boards of the state and the public officers and servants of counties and municipalities, all persons whatsoever occupying positions in state institutions."
(§ 36-12-1, *Ala. Code* 1975)

Public Records: Duties?

(§ 36-12-1, *Ala. Code* 1975)

- Public officers and servants required to create and maintain records that document business of their office.

- The records shall be carefully protected and safely preserved and guarded from "mutilation, loss, or destruction."

Public Records: Duties Cont.

- Required to transfer all current records pertaining to agency business affairs or transactions to any successors in office.

  (§ 36-12-4, *Ala. Code* 1975)

- Required to contact the Alabama Department of Archives and History when records pertaining to the conduct of office business cease to be current.

  (§ 36-12-5, *Ala. Code* 1975)

Inspection and Copying of Records

- "Every citizen has a right to inspect and take a copy of any public writing of this state…" (§ 36-12-40, *Ala. Code* 1975)

- Statutory Exceptions:
  - Anything specifically exempted by statute.
  - Registration and circulation records and info concerning the use of libraries.
  - Records concerning safety and/or security plans, procedures, assessments, measures, or systems if disclosure could be detrimental to public safety or welfare.
  - Records the disclosure of which would otherwise be detrimental to the best interests of the public.

"Rule of Reason" Test

- "Courts must balance the interest of the citizens in knowing what their public officers are doing in the discharge of public duties against the interest of the general public in having the business of government carried on efficiently and without undue influence."
  Stone v Consolidated Pub. Co., 404 So.2d 678, 681 (Ala. 1981).

  -Recorded information received by public officer in confidence;
  -Sensitive personnel records;
  -Pending criminal investigations;
  -Records the disclosure of which would be detrimental to the best interest of the public.

- Public has no right to records that are more personal than public.
  Blankenship v. City of Hoover, 590 So.2d 245 (Ala. 1991)

Redactions

- More personal than public
  - AG No. 2015-057
    - Home address
    - Home telephone number
    - SSN
    - Driver's license number
    - Juvenile Information

Statutory Redactions

- Non-Exhaustive List:
  - -DOB
  - -SSN
  - -Driver's License No.
  - -Financial Services Accounts Numbers, including checking and savings accounts
  - -Credit or debit card numbers
  - -Personal Identification Numbers (PIN)
  - -Electronic identification codes
  - -Automated or electronic signatures
  - -Biometric data
  - -Finger Prints

(§ 41-13-7, *Ala. Code* 1975)

Format of Records

- AG No. 2007-001: A state agency is not required to distribute public records in the manner that a requestor specifies.

- AG No. 90-00288: Dept. of Public Safety did not have to sort driver's license information and provide it on computer disc.

Costs

- AG No. 98-00161: A public entity may recoup reasonable costs incurred in providing public documents.
  - -If possible, provide free copies of public records
  - -However, may charge nominal fee due to budgetary constraints
  - -Actual cost of copying or retrieving information
  - -Staff research, preparation, and time
  - -Not any attorney's fees

Cost Recovery

- The Board charged excessive fees for lists of its licensees. The Board charged $100 for a list of its licensees with addresses, and $125 for the same list on labels. According to the Board's executive director, the fees are based on the cost of maintaining the records from which the list is produced. The *Code of Alabama 1975*, Section 34-00-00, requires the Board to keep a record of licensees along with their addresses as a part of its duties, and the law authorizes the Board to collect licensing and regulatory fees to carry out this and other duties.
- It is improper for the Board to impose a charge for providing a copy of the names and addresses of licensees that includes the cost of maintaining the record, because the law has already provided funds to maintain the record. The only appropriate charge for a copy of the names and addresses is the incremental actual cost of extracting the information and conveying it to the requestor, without regard to the cost of maintaining the record. The Attorney General in his Opinion 2004-108 reiterates that fees charged for copies of public records must be based upon actual cost, cannot be imposed to restrict public access, and that copies are available to businesses to the same extent as to private individuals.

Public Contracts

Public Contracts: An Overview

- What is required?
  - Disclosure Statement (§ 41-16-72, *Ala. Code* 1975)

    -All proposals, bids, contracts or grant proposals in excess of $5,000

    -If by comp. bid, within 10 days of award
  - Legislative Contract Review Oversight Committee (§ 29-2-41, et seq. *Ala. Code* 1975)

    -Contracts for personal or professional services with private entities or individuals to be paid out of appropriated funds, federal or state, on a state warrant.
  - Emergency Contracts

Public Contracts: An Overview

- What is required…cont.?
  - E-Verify (§ 31-13-9, *Ala. Code* 1975)
  - Beason Hammon (§ 31-13-1, *Ala. Code* 1975)
  - Systematic Alien Verification for Entitlements Program (SAVE)
    - Only applies if contracting party is a non-U.S. Citizen (§ 31-13-7(i), *Ala. Code* 1975)
    - Not applicable if contracting party is a business entity or employer.
  - Boycott Act (§ 41-16-5, *Ala. Code* 1975)
  - Misc. Requirements (Personal & Prof. Service Contracts)

    -Name, Scope of Contract, Term of Contract, Contract Amount, Termination/Alt. Dispute Resolution Clause, Merit System Exclusion Clause, and Disclosure Statement.

Contract Finding – Missing Documents

Contracts for accounting services, services of a former board member, court reporting services, legislative consultation services, inspector/investigator training, etc. are missing documentation of compliance with Alabama law as follows:

The Board could not provide documentation that the contracts were awarded based on either a Request for Proposal (RFP), competitive bidding or a "Sole Source' determination.

Disclosure statements were not provided.

One contract had no expiration date.

Documentation of the vendor's compliance with the Alabama Immigration Act (E-Verify enrollment) was not provided for any of the contracts.

One contract was signed 176 days after the effective date of the contract.

Public Contracts: Bid Law

- When is competitive bidding required?
  - All contracts of whatever nature for labor, services, work, or for the purchase or lease of materials, equipment, supplies, other personal property or other nonprofessional service;
  - $15,000 or more;
  - Any state department, board or commission;
  - Must be a free and open competitive bidding, on sealed bids, to the lowest responsible bidder.

(§ 41-16-20, *Ala. Code* 1975)

Public Contracts: Bid Law

- When is competitive bidding NOT required?
  - (§ 41-16-20, *Ala. Code* 1975)
    - Attorneys
    - Physicians
    - Architects, Engineers. Etc.
    - Other professional
  - (§ 41-16-75, *Ala. Code* 1975)
    - Sole Source

Finding 1- Unauthorized Contract Payments

- ABC Consulting Group LLC, the Commission's contractor for administrative services, made payments from the Commission's funds totaling $9,444.04 between the period of October 1, 2013 and March 31, 2017 for purchases of office equipment, office supplies and services that were not authorized under the terms of the Invitation to Bid Response.
- The bid provisions state that, "Payment shall be made only to the contractor, and the Commission shall have no obligation to any other person or corporation for expenses incurred by the Contractor. The Contractor has no authority to make any contracts, oral or written, in the name of the Commission."
- The bid provision also required the contractor to provide office space, all required furniture and materials. Including not limited to desks, chairs, copy machines and computers.

Finding (cont.)

- ABC Group, LLC made the following payments to third parties from the Commission's funds. We found no record of the Commission's approval of the following expenditures:
  - $1,270.68 for office equipment
  - $6,736.20 – Office supplies
  - $1,164.36 – Clothing apparel
  - $272.80 – Personal use items

QUESTIONS???

Travel

In-State Per Diem: Update

§ 36-7-20, Ala. Code 1975

- Current law allows the Governor to set "per diem" rate at "not less than $75 per day."
- New rates issued: Effective July 1, 2018

Travel time	Entitlement
6 hours or less	No per diem (per day) allowance
6 to 12 Hours	$12.75 (1 meal allowance at 15% of a per diem allowance of $75)
More than 12 hours but not over-night	$34 (1 meal at 15% of the daily per diem rate of $85 + ¼ of the daily per diem rate of $85)
Over-night; one night stay	$85 per day
Over-night; 2+ nights	$100 per day

Out-of-State Travel & In-State Conf: Update

§ 36-7-21, Ala. Code 1975

- All employee and non-employee travel approved by Agency Director.
  - -Agency Director travel still approved by Governor.
- Out-of-State: "actual" expense reimbursement for hotel and registration fees, etc.
- In-State: entitled to "actual" expense reimbursement for hotel and registration fees, etc. via cert. of Agency Director.
- Continental United States (CONUS): rate for meals and incidental expenses (M&IE) in accordance with federal per diem amounts.
- Travel website being re-vamped

Finding 1- In-State Travel

A lack of adequate internal controls resulted in a significant number of errors related to reimbursement of in-state-travel expenses. Twenty-four of the ninety-two travel claims reviewed for in-state travel disclosed the following errors:

- One traveler's mileage was consistently overstated resulting in a total overpayment of $1,112.76 for ten travel claims.
- Six travelers were reimbursed $11.25 for a meal allowance when a meal was provided by the Board resulting in an overpayment of $56.25.
- One traveler was reimbursed $11.25 for a meal allowance on three travel claims resulting in an overpayment of $33.75, and one traveler was reimbursed $11.25 for a meal allowance while remaining in the city where his base is located.
- Three travelers were reimbursed $11.25 for a meal allowance for travel for less than six hours duration resulting in an overpayment of $33.75.
- One traveler was reimbursed $11.25 for a meal allowance but the traveler stayed overnight and should have been received $150.00 resulting in an underpayment of $138.75.

Finding - Out of State Travel

Two employees traveled out-of-state fifteen times during the examination period. We noted the following discrepancies:

- The daily rate for meals was exceeded sixteen times resulting in overpayments totaling $347.20
- One traveler purchased four meals on one day in a span of four hours. The total cost of the meals purchased was $131.43. The daily rate allowed for meals for the day was $46.00
- One traveler purchased alcohol in the amount of $6.60
- Travelers upgraded their airline seats to comfort seats three times resulting in additional charges totaling $196.00
- Flight protection - $71.00
- Golf Outing - $150.00

QUESTIONS???

Department of Examiners of Public Accounts

2020 BOARD MEMBER TRAINING

BEST PRACTICES

Internal Controls -- What are they and Why do We Need them?

Christine Harden, Assistant Chief Examiner

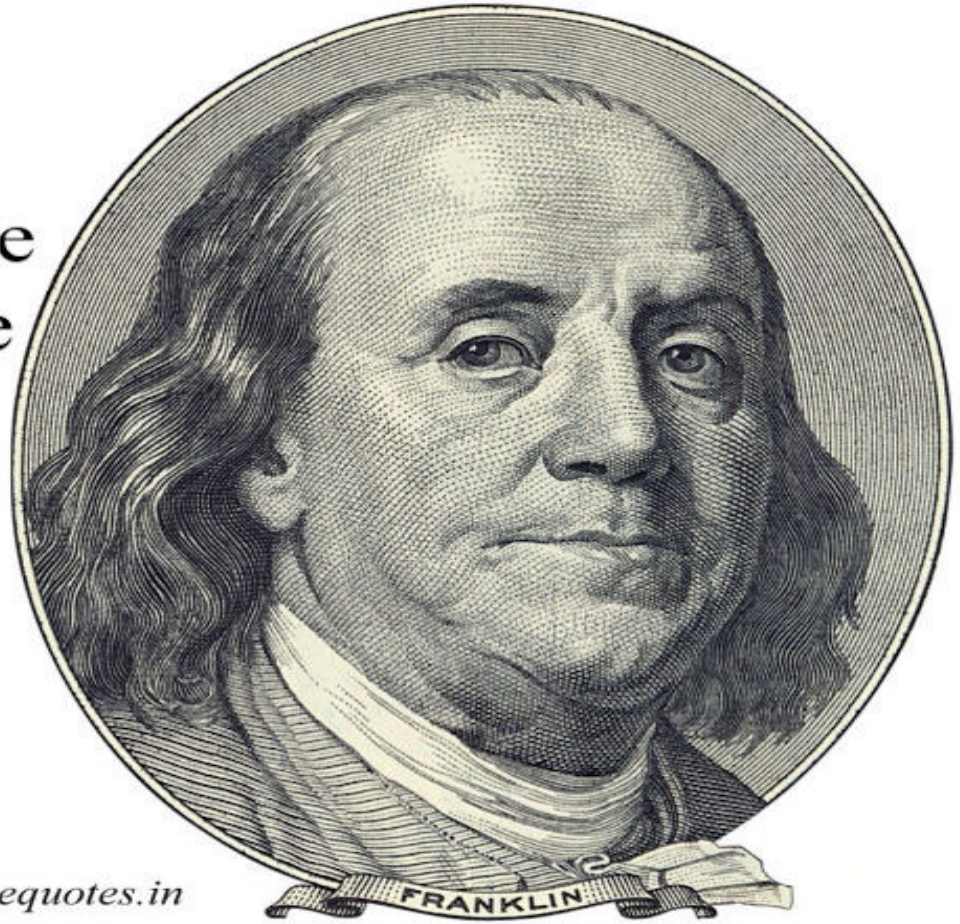
Learning objectives

- Participants will learn what internal controls are?
- Participants will learn why internal controls are important?
- Participants will learn what their roles and responsibilities are in the internal control process.
- Participants will also learn some best practices for solving potential problems caused by the lack of internal controls or inoperable internal controls.

Quote to Remember

Tell me and I forget, teach me and I may remember, involve me and I learn.

Benjamin Franklin



www.thequotes.in

What are internal controls? --Internal control defined

- Internal control is defined as a "**process** effected by **those charged wi**th **governance, management and other personnel** that is designed to provide **reasonable assurance** about the **achievement of the entity's objectives** with regard to the **reliability of financial reporting**, **effectiveness and efficiency of operations**, and **compliance with applicable laws and regulations. "**

What does that mean in laymen's terms?

- Process (policies, procedures, equipment and other resources)
- People (those charged with governance, management and others)
- Checks and balances (reasonable assurance)
- Accomplish goals and objectives (achievement of entity's objectives)
  - Accurate and reliable financial reports
  - Efficient and effective operations (resources are not wasted)
  - Comply with laws and regulations

Five Components of internal control

- Control Environment
- Risk Assessment
- Control Activities
- Information and Communication
- Monitoring

Control Environment

- Provides the structure for the organization
- Sets the organizational tone (“tone at the top”)
- Consists of the Board Members, Executive Director, Manager, Chief Operations Officer, Chief Executive Officer, etc.
- Consists of the organization’s ethical values

Risk assessment

- Identifying threats to the organization
  - Internal
  - External
- Assessing the impact of the threats
- Developing Responses to the threats

CONTROL ACTIVITIES

- Policies and procedures that help to ensure management's directives are carried out.
  - Authorization
  - Separation of Duties
  - Performance Reviews
  - Physical controls
  - Processing Information

Information and communication

- Information System (includes the accounting system)
- Establish procedures for the business processes necessary to capture the organization's activities
  - Initiating, authorizing, recording, processing and reporting the agency's transactions
  - Correcting transaction processing errors
  - Handling overrides and bypasses of the system's controls
  - Transferring (recording) transactions into the General Ledger Accounts
  - Captures financial reporting information (Record Financial Transactions --revenues, receipts, expenditures, expenses, equity)
  - Prepare Financial Statements (financial reporting)

Information and Communication

Communication

- Communicate information throughout the organization
  - Policy manuals
  - Financial Reporting Manuals
- Ensures that employees understand their roles and responsibilities
- Helps employees understand how their roles impact others in the agency
- Report exceptions to appropriate levels in the agency
  - Free and Open
  - Appropriate action is taken

MONITORING

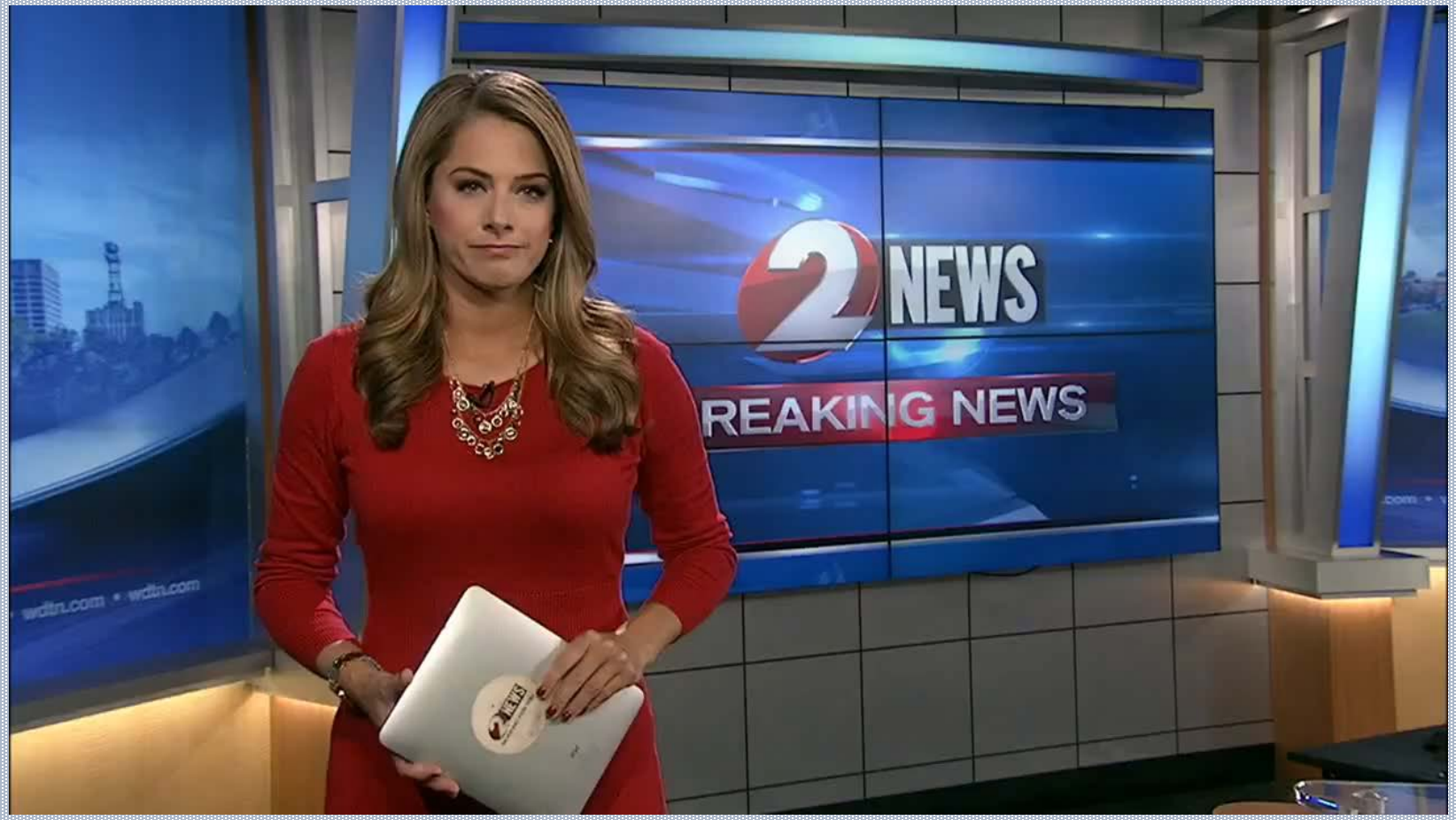
- Addresses the performance of internal controls over time
- Controls may need to be redesigned as processes change

Monitoring

- Are controls accomplishing their desired objectives?
- Have processes, or the environment changed?
- Are procedures adequately addressing the changing environment or processes?
- Are procedures detecting and preventing errors?
- Are staff members adequately trained?
- Are duties properly segregated?

What can happen when internal controls fail

What can happen when internal controls fail



What can happen when internal controls fail

Headlines around Alabama

- Arrest in $40,000 embezzlement case
- UAB employee sentenced to prison for $1.1million theft
- Former Franklin County Administrator Sentenced to 20 years, pay restitution
- Retired Washington County Revenue Commissioner Arrested

CASE #1 – The Wayward Administrator Franklin County, Alabama

Facts

1. The Administrator prepared and approved purchase orders to fictitious vendors.
2. The Administrator used unsecured blank check stock to generate payments to the fictitious vendors.
3. The Administrator altered the payee name on the check and then entered her own name on the checks.
4. The Administrator signed the checks electronically without appropriate authorization.

Case #1 – The Wayward County Administrator Franklin County, Alabama

Facts Cont'd

5. The Administrator receipted and disbursed cash, posted entries to the accounting records and prepared the bank reconciliations.
6. The Administrator received the bank statements at the end of the month, altered the imaged copy of the check; removed her name from the check and replaced it with the fictitious vendor's name so that it would match the information contained in the accounting records and the vendor activity reports. The altered bank statements were substituted for the originals in the Commission's files.

Case #1 – Wayward County Administrator Franklin County, Alabama

Facts Cont'd

7. The Administrator misappropriated **$753,889.21** during the period October 1, 2007 through September 30, 2017

Former Franklin County Administrator sentenced to serve 20 years, pay restitution

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https://screenshots.firefox.com/45aalawiGDilc7zE/whnt.com

What happens when internal controls fail

- FRANKLIN COUNTY, Ala. – A former Administrator for Franklin County has been sentenced to two 20-year terms related to missing county funds. The judge handed down her sentence this morning.
- Crista Madden pleaded guilty in March to two felony charges: the use of position or office for personal gain, and use of official equipment for personal gain. Court officials say she took more than $750,000 from the county between the years of 2007 and 2017.
- Today, a judge sentenced Madden to 20 years on each charge, which will run concurrently. She is also to repay the money taken from the county. The judge also denied Madden's request for probation.
- Court officers took Madden into custody at today's hearing.

- Source: WHNT 19 News

Best Practices to Solve this Case

- **Separation of Duties**
  - Person authorizing transaction should not be the one to also approve the transaction
  - Establish an approved vendor's list
  - Secure stock of blank checks with someone independent of the disbursement process
  - Select and/or designate a person **independent** of the disbursement process to: (1) receive the bank statements unopened each month; (2) inspect and review the statement, including cancelled checks; and (3) reconcile the bank balance to the general ledger cash balance.

Fox 10 News – Washington County Sheriff: forgery investigation in early stages (April 26,2018, reporter Steve Alexander)

Case #2 – The Case of the Trusted Secretary/Treasurer

- Mrs. Laura Lee Taylor's Case **has not** gone to trial. --She is presumed innocent until this case has been adjudicated in a court of law.
- She was arrested and was held on a $20,000 bond.
- She has been charged with four counts of second degree possession of a forged instrument
- Let's take a look at the facts as contained in publicly available documents.

Case #2 – The Case of the Trusted Secretary/Treasurer

Facts

1. The Secretary/Treasurer created fictitious Official Minutes of Board Meetings
2. The fictitious minutes contained authorizations for bank loans and payments to various individuals complete with forged signatures.
3. The Secretary/Treasurer issued checks to family members, individuals and businesses totaling $407,810.22 and the agency did not receive any goods or services in return.

Case #2 – The Case of the Trusted Secretary/Treasurer

Facts Cont'd

4. The Secretary/Treasurer executed multiple loan agreements with local banks totaling at least $214,729.19 on behalf of the Board with proper authorization.
5. The Secretary/Treasurer did not maintain a cashbook that reflected the Board's receipts, disbursements and balances.
6. The Secretary/Treasurer received and opened the bank statements at the end of each month.

Case #2 – The Case of the Trusted Secretary/Treasurer

7. Monies received by the Board were not deposited into the bank account in a timely manner.
8. Pre-numbered receipts were not issued to record revenues received and collected by the Board.
9. Voided/spoiled checks were not defaced and retained for audit review.
10. Documentation was not retained to support all disbursements.
11. A total of at least $408,293.84 of the Board's funds were misappropriated.

Best Practices to Solve Case #2

- Review the minutes for integrity and approve the minutes at each meeting.
- Require Board approval for <u>all</u> loan documents to be [Board resolution]
- Require Board President to execute loan documents and complete the loan after approval by Board.
- Review documentation for all disbursements/expenditures before checks are signed.
- Do not return signed checks to the preparer – Mail them yourself.
- Exercise oversight – periodically review financial transactions

Best Practices to Solve Case #2

- Insist on receiving financial reports monthly, quarterly, etc. to help you assess your agency's financial condition.
- Have someone independent of the receipt and disbursement process to receive the bank statement at the end of each month unopened and review the imaged (cancelled) checks, deposits and transfers. Look for unusual activities.
- Insist on timely bank deposits
- Use pre-numbered receipts to record revenues
- Retain and deface voided/spoiled checks for inspection

Best Practices to Solve Case #2
What do you think could have been done?

Case #3 – Case of the State Employee with Sticky Fingers

Case #3 - Case of the State Employee with Sticky Fingers

Facts:

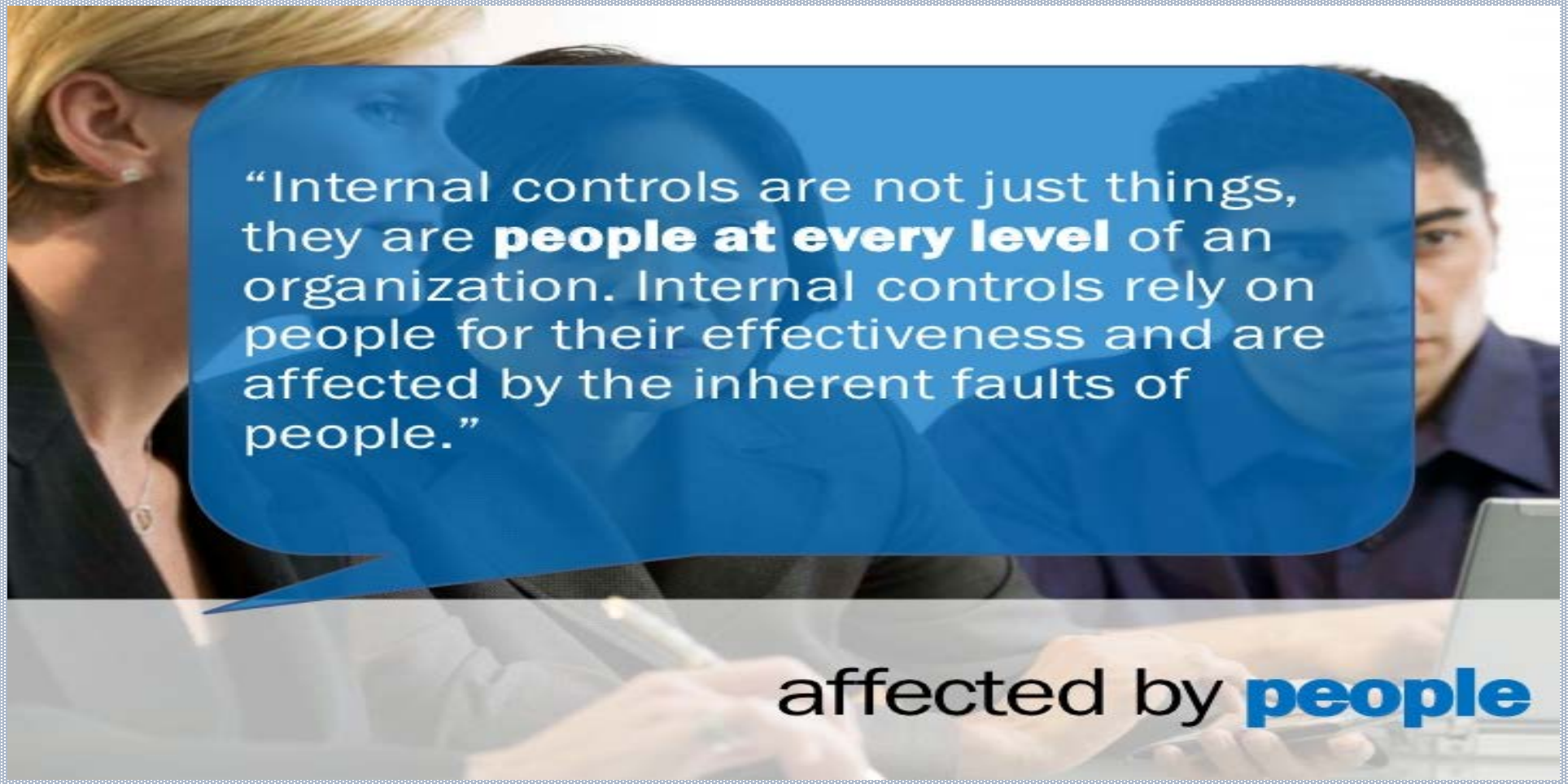
1. Employee received and deposited cash, checks and money orders collected by other employees.
2. Employee prepared the deposit.
3. Employee posted the deposits to the accounting records.
4. Employee performed duties related to worthless checks to include posting the checks to the accounting records, receiving recovered amounts directly for the check issuers and updating the recovered payment information in the accounting records.

Case #3 - Case of the State Employee with Sticky Fingers

Facts Cont'd:

5. Employee continued to receive recovered amounts from worthless checks even after accounting system was revamped and the duties were assigned to other employees.
6. Employed received and processed repayments of scholarships from persons who did not complete the agency's scholarship program.
7. Employee employed a lapping scheme --Employee would removed cash from collections of cash, checks and money orders that were accumulated for deposit in batches; hold the incomplete batches and would complete it with subsequent collections or checks and money orders in an effort to conceal the cash deficiency.
8. Employee manipulated agency records to conceal the [$6,152.09 net shortage] cash removal.

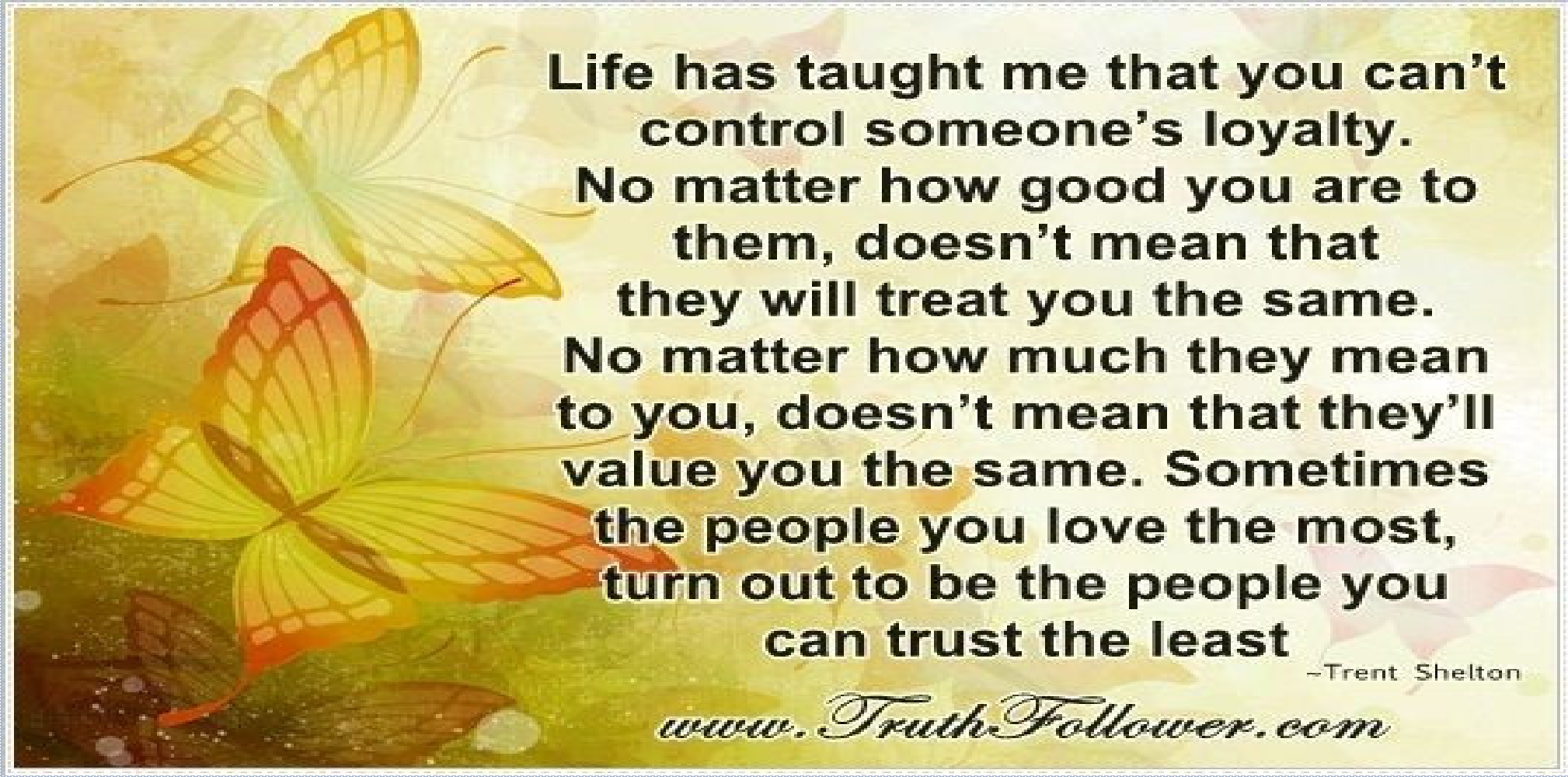
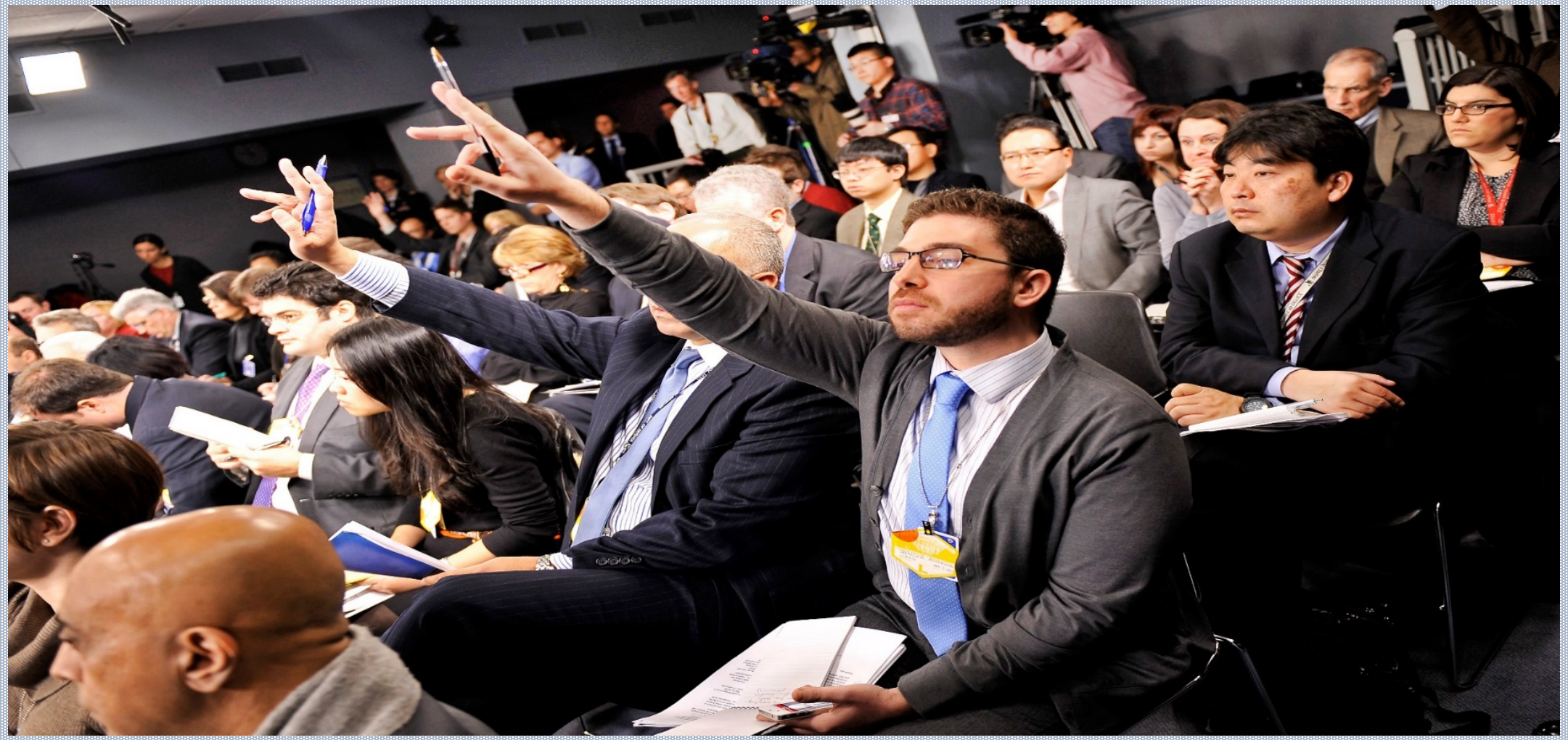
REMEMBER!


"Internal controls are not just things, they are **people at every level** of an organization. Internal controls rely on people for their effectiveness and are affected by the inherent faults of people."
affected by people

Summary

- Remember you are the gatekeepers.
- Monies received and disbursed by you on behalf of the State of Alabama should be used appropriately.
- Review your agency's policies and procedures periodically and make adjustments where necessary.
- Every agency, even the smallest one, should have a system of checks and balances.
- Governments also have vulnerabilities that can be exploited if proper procedures are not implemented.

Trust but Verify!



Questions?