

The Senate of West Virginia
Charleston

ERIC J. TARR
CHAIR
COMMITTEE ON FINANCE



STATE CAPITOL, ROOM M-461
1900 KANAWHA BLVD. EAST
CHARLESTON, WV 25305-0800
304-357-7901

March 20, 2023

Office of Inspector General
1500 Pennsylvania Avenue, N.W.
Room 4436
Washington, D.C., 20220

Dear Office of Inspector General :

Please conder this an inquiry as to whether West Virginia Governor, Jim Justice, grossly misappropriated, and misused \$28,375,985.43 CARES funding provided to the State of West Virginia on non-covid related expenses such that it would violate federal law/regulation, violate ethics standards, or would be subject to claw back at some time in the future for improper application. This inquiry stems from a February 3, 2023, West Virginia State Senate Finance Committee hearing with the Governor's Chief Counsel Berkely Bentley, regarding a suspicious transfer of funds to a Governor's discretionary account. The letter and its attachments are being sent to the United States Department of Revenue Office of the Inspector General, United States Southern District Prosecutor, and West Virginia Ethics Commission.

In short, from testimony in that Senate Finance Committee Hearing, the committee discovered that in order to avoid federal claw back of un-expended CARES Act funds, the Governor approved the transfer of the last remaining CARES funds, \$28,375,985.43 to his discretionary fund. He related the transfer to a reimbursement of COVID related expenses within the Department of Corrections and Rehabilitation. State Auditor J.B. McCuskey testified that the transfer was highly unusual both in its type and amount for this fund, with the largest balance prior the transfer request being around \$250,000. Secretary of the West Virginia Department of Homeland Security testified that prior to this transfer, the Department of Corrections and Rehabilitation did have Covid related expenses for which it had already been reimbursed, prior to the transfer of \$28,375,985.43 to the Governor's discretionary account. Once the funds arrived in the Governor's discretionary only an additional \$280,721 were transferred to the Department of Corrections and Rehabilitation. However, \$10,000,000 was donated to Marshall University – Baseball Facility Project for field artificial turf. The other expenses from the account, following the transfer, totaled \$246,088 including, but not limited to payouts to Do It For Baby Dog sweepstake winners of WV State Park Getaways and a minibus for Appalachian Bible College. At least \$10,106,000 of the \$28,375,985.43 transferred from the CARES Act fund were not related to necessary

expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019; were not incurred during the period that begins on March 1, 2020 and ends on December 31, 2021. The refunds to WV Department of Corrections and Rehabilitation were either already accounted for in the budget most recently approved as of March 27, 2020, for the State or previously reimbursed from CARES Act funds. Hence the Governor converted at least more than \$10,000,000 funds received from the CARE Act to give away not even remotely related to Covid 19 and claimed it as reimbursement for Department of Corrections expenses that had previously been reimbursed. Given this information, is federal investigation warranted?

In detail, On September 22, 2022, Governor Justice approved a transfer totaling \$28,375,985.43 from the Coronavirus Relief Fund to the Governor's Office Gifts, Grants, and Donations Fund per the attached letter from the Governor to the West Virginia State Auditor J.B. McCuskey. In an attached email chain on September 13, 2022, related to the Governor's request for the transfer, Kent Hartsog of the State Auditor's office challenged the transfer request with Anne Urling, Governor Jim Justice's Deputy Chief Counsel, asking for a letter "stating that this transfer is appropriate and not subject to legislative appropriation." Governor Justice's Chief Counsel, Berkely Bentley, responded in an attached letter in that email chain stating, "The CARES Act, as amended, requires that the payments from the Coronavirus Relief Fund only be used to cover expenses that meet the following criteria:

1. Are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19).
2. Were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and
3. Were incurred during the period that begins on March 1, 2020 and ends on December 31, 2021."

When testifying to the email exchange, Chief Counsel Bentley acknowledged guidance from a consultant, BDO for use of CARES Act funds. In a letter included in the 9-13-2022 email exchange, David Clark, Managing Director of Industry Spec Svcs for BDO USA, LLP states to Governor's Deputy Chief of Staff Ann Urling, "Once and expense is considered charged to the CRF, the State is able to reimburse itself for the original source used for that expense. This means that, for every dollar claimed against the CRF for costs already paid by the State, the State will be reimbursed that amount and have such funding available for use as State funding again (since that was the source of the original money paid for the expense)." The COVID related expense that already had been reimbursed to Corrections (according to testimony from Secretary Sandy) and were now being claimed against the funds transferred to the Governor's Office Gifts, Grants, and Donations Fund did not originate from the Governor's Office Gifts, Grants, and Donations fund. They would have had to either originate from a Department of Corrections and Rehabilitation fund or the State's Consolidated Fund.

Mr. Bentley went on to testify that \$10,000,000 of the money, which he said was no longer CARE Act funds once they were transferred to the Governor's Office Gifts, Grants, and Donations Fund, was donated in a very public fashion for the Governor to Marshall University to turf a baseball field.

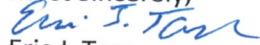
Also, during the February 3rd hearing at 3:18pm the West Virginia Secretary of Homeland Security, Jeff Sandy, who is responsible for the Department of Corrections and Rehabilitation, which has been under a state of emergency since 2020, testified that it's COVID related expenses had been reimbursed prior to this transfer. He also testified that although they remain under a state of emergency with National

Guardsmen staffing providing staffing for their more than 1,000 FTE shortfall, he has had limited face to face communications with the Governor. This was in great juxtaposition to the testimony of every department Secretary before the committee that day, none of which remain under a state of emergency.

The hearing, including testimony from the Governor's chief Counsel, Berkely Bentley, beginning at the 11:32 mark and Secretary Jeff Sandy beginning at the 15:18 mark can be found at <http://sg001-harmony.sliq.net/00289/Harmony/en/PowerBrowser/PowerBrowserV2/20230203/-1/57652> . Also attached is the email chain between the West Virginia State Auditors, office on September 13, 2022, the Governor's approval of the two transfers totaling \$28,375,985.43, and the State Auditor's accounting of the CARES Act funding, including on page 8, the Governor's Office Gifts, Grants, and Donations Fund (1029). The Governor's press release on 9-29-2022 related to donating \$13.8 million to Marshall University (\$10,000,000 from the converted CARES Act funds and \$3.8 million from the Economic Development Enhancement fund within the IJDC can be found at [https://governor.wv.gov/News/press-releases/2022/Pages/Gov.-Justice-announces-\\$13.8-million-to-complete-new-Marshall-baseball-stadium.aspx](https://governor.wv.gov/News/press-releases/2022/Pages/Gov.-Justice-announces-$13.8-million-to-complete-new-Marshall-baseball-stadium.aspx) .

I appreciate in advance your response to these concerns regarding ethics, legality, and risk of any future claw backs.

Most Sincerely,



Eric J. Tarr

Chairman, West Virginia Senate Committee on Finance

cc: Kimberly Weber, Executive Director, West Virginia Ethics Commission

William Thompson, U.S. Attorney, United States Attorney's Office, Southern District of WV