



Auditor of Public Accounts
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Harmon Releases Audit of Daviess County Clerk's Fee Account

FRANKFORT, Ky. – State Auditor Mike Harmon today released the audit of the 2015 financial statements of Daviess County Clerk David “Oz” Osbourne. State law requires the auditor to conduct annual audits of county clerks and sheriffs.

Auditing standards require the auditor’s letter to communicate whether the financial statements present fairly the receipts and disbursements of the Daviess County Clerk and the receipts, disbursements, and fund balances of the Daviess County Clerk’s operating fund and county fund in accordance with accounting principles generally accepted in the United States of America. The clerk’s financial statements did not follow this format. However, the clerk’s financial statements are fairly presented in conformity with the regulatory basis of accounting, which is an acceptable reporting methodology. This reporting methodology is followed for all 120 clerk audits in Kentucky.

As part of the audit process, the auditor must comment on noncompliance with laws, regulations, contracts, and grants. The auditor must also comment on material weaknesses involving the internal control over financial operations and reporting.

The audit contains the following comment:

The county clerk failed to properly document hours worked by employees. The county clerk failed to properly document all hours worked by bookkeeping and supervisory employees. Timesheets did not accurately reflect the time worked by the bookkeeping or supervisory employees. These employees were informed they would not be paid for overtime worked because the clerk considered the bookkeeping and supervisory employees to be exempt from overtime requirements. The supervisors perform the same work as the employees they supervise. The bookkeeping employees are recording transactions and make no financial decisions.

Also, the county clerk paid other employees for time not worked when employees were allowed to leave early without using leave time. These same employees worked over during the same week and were paid overtime. Overtime could not be recomputed properly because the hours worked did not agree to hours paid.

The county clerk did not get a decision by the U.S. Department of Labor Wage and Hour Division as to the applicability of salary exempt status to his supervisor and bookkeeping employees, which was recommended to the county clerk in the prior year's audit. Additionally, the county clerk did not realize the effects on overtime computations when he allowed employees to leave early, but compensated the same employees for a full day's work.

Supervisory and bookkeeping employees may have been denied wages due for overtime worked. Some employees were paid for time not worked or overtime not earned, which is a waste of county resources. Those employees could be required to repay amounts paid to them but not earned.

KRS 337.320 states, "(1) Every employer shall keep a record of: (a) The amount paid each pay period to each employee; (b) The hours worked each day and each week by each employee; and (c) Such other information as the commissioner requires." Also, KRS 337.285 requires that no employer "employ any of his employees for a work week longer than forty (40) hours, unless such employee receives compensation for his employment in excess of forty (40) hours in a work week at a rate of not less than one and one-half (1-1/2) times the hourly wage rate at which he is employed." Additionally, in accordance with Funk v. Milliken, 317 S.W.2d 499 (Ky. 1958), Kentucky's highest court ruled that county fee officials' expenditures of public funds will be allowed only if they are necessary, adequately documented, reasonable in amount, beneficial to the public, and not primarily personal in nature.

We recommend the county clerk keep an accurate record of hours worked by all employees and compensate employees only for actual hours worked, or taken off in the form of paid leave time. Employees should only be paid for overtime actually worked. If the county clerk wishes to question the salary exempt status of employees, the county clerk should contact the federal wage and labor board and get a written ruling as to the actual status of each employee in the clerk's office. The county clerk should follow the Funk v. Milliken ruling to determine if a payments to employees in excess of amounts owed for hours worked or leave taken are necessary, adequately documented, reasonable in amount, beneficial to the public, and not primarily personal in nature.

County Clerk David Osborne's Response: For several years including 2015, my office has been trying to determine the applicable interpretation of wage and hour laws that pertain to management and employees of the Clerk's Office. I requested a decision in writing from the Federal Department of Labor but was only directed to published materials already available on line which was not acceptable. Though I am still not in total agreement, my office has made the necessary adjustments that were requested to reflect that all employees with the exception of the Clerk are on an hourly wage and are subject to overtime pay. In reference to the employees who left early, this situation has also been addressed and adjustments have been made that comply with the auditor's recommendations and state law. In no way was I nor any employee intentionally trying to circumvent any state or federal wage and hour laws. I respect our auditor's decision and will do my utmost to comply with the recommendations.

The county clerk's responsibilities include collecting certain taxes, issuing licenses, maintaining county records and providing other services. The clerk's office is funded through statutory fees collected in conjunction with these duties.

The audit report can be found on the [auditor's website](#).

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