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Harmon Releases Audit of Jefferson County Clerk's Fee Account

FRANKFORT, Ky. – State Auditor Mike Harmon today released the audit of the 2015 financial statement of Jefferson County Clerk Bobbie Holsclaw. 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 Jefferson County Clerk and the receipts, disbursements, and fund balances of the Jefferson 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.

The audit contains the following comment:

The Jefferson County Clerk's Election Center provided election services for private entities. In the 2011 audit exit conference, it was noted that the Jefferson County Clerk's Election Center provided election services, for a fee, to private entities, such as unions and churches. The activity continued in 2012, 2013, 2014, and 2015. These services included preparation of ballots, delivery of the publicly owned voting machine to the private entity's location, monitoring of the private entity's election by a deputy county clerk, tallying the votes, and providing election results. The county clerk does not have a policy to prohibit the use of public equipment and personnel for private purposes.

By continuing this activity, the county clerk is allowing the use of public equipment and personnel for a private entity's private purposes, and is charging a fee for a service where the fee is not authorized by statute. Per KRS 64.410(2)(b), a county clerk, as a fee officer, may not receive for her services "[a]ny fee for services rendered when the law has not fixed a compensation[.]"

Further, public equipment and personnel may be used only for a public purpose, and use by a private entity is prohibited by Ky. Const. Sec. 171, as interpreted in OAG 84-190. We recommend the Jefferson County Clerk comply with KRS 64.410 and the Kentucky Constitution and discontinue providing and charging a fee for election services to private entities for the private purposes of those entities.

County Clerk's Response: Last year, the Jefferson County Clerk's office provided a response to a comment almost identical to this comment. The Jefferson County Clerk provides election services as required by KRS Chapter 117 and complies with all requirements of Kentucky law in so doing. These services are not performed using fees from the Clerk's Fee Account which is the account examined in this Audit, nor do they fall under KRS Chapter 64 or Ky. Const. 171.

This practice has occurred for over 50 years. Many County Clerks offer the same services. The provision of election services provides a public service in educating voters, demonstrating the integrity of the voting system and providing valuable training and testing for election personnel and equipment. Use of the machines in election introduces potential voters to the process. It is such a good learning tool that the Kentucky State Board of Elections strongly promotes using voting machines and election personnel for mock elections for school children.

The voting machines are not paid for out of the Clerk's Fee Account but rather are purchased by Louisville Metro Government under KRS 117.377. The entities requesting the service reimburse the Clerk's Office for the equipment and for any hours that any Clerk's Office employee spends on the election. If the entities requesting the service did not reimburse the Clerk's Office, there is no doubt that this audit would criticize that practice as well.

The Audit's reliance to Kentucky Constitutional Section 171 is misplaced as that section covers the use of taxes for public purposes and no taxes are collected in this case. The Audit's citation to OAG 84-190 is puzzling because it supports the Clerk's Office use of the equipment as it holds that using county property on private land is permissible if it serves a public purpose. Voter education, election promotion and training are public purposes, according to OAG 92-87. In that opinion, the Attorney allowed a public office to donate public money to a charitable organization for voter education. OAG 92-87 states "We have no hesitation in concluding that increasing voter education, participation, and registration represent a valid public purpose." OAG 86-23 opines that a public entity may benefit a private entity if the purpose is a public one.

This matter was also reviewed by the Jefferson County Attorney three years ago and the matter concluded in favor of the Clerk's Office.

Auditor's Reply: While using county clerk's deputies and voting machines to conduct mock elections for children at schools is a valid, educational use of personnel and equipment, that is not the activity at issue in the audit comment. The use of county clerk's deputies and equipment to conduct actual elections for private entities is the activity at issue. Further, the county clerk is violating state law by collecting a fee not provided for in statute. Although there may be some room for debate as to the outreach or educational value of these election services, it is clearly improper for the clerk's office to collect such an unauthorized fee.

Because deputies' salaries are paid from the fee account and the fees paid by the private entities are processed through the county clerk's accounting system, the activity is subject to the fee account audit and should comply with all applicable laws and regulations. In addition, whether the voting machines were purchased by the county clerk's office directly or by Louisville Metro Government, they are public equipment and subject to the same restriction on use for private purposes.

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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