



Auditor of Public Accounts  
Mike Harmon

**FOR IMMEDIATE RELEASE**

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### **Harmon Releases Audit of Magoffin County Sheriff's Fee Account**

**FRANKFORT, Ky.** – State Auditor Mike Harmon today released the audit of the 2014 financial statement of Magoffin County Sheriff Carson Montgomery. State law requires the auditor to annually audit the accounts of each county sheriff. In compliance with this law, the auditor issues two sheriff's reports each year: one reporting on the audit of the sheriff's tax account, and the other reporting on the audit of the fee account used to operate the office.

Auditing standards require the auditor's letter to communicate whether the financial statement presents fairly the receipts, disbursements and excess fees of the Magoffin County Sheriff in accordance with accounting principles generally accepted in the United States of America. The sheriff's financial statement did not follow this format. However, the sheriff's financial statement is fairly presented in conformity with the regulatory basis of accounting, which is an acceptable reporting methodology. This reporting methodology is followed for all 120 sheriff 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 comments:

**The sheriff did not oversee the daily operations of his office which resulted in significant accounting deficiencies:** The sheriff did not oversee in the daily operations of his office, which resulted in significant accounting deficiencies. Numerous weaknesses in the control environment of the Magoffin County Sheriff's office significantly increase the risk of fraud, misappropriation of funds, and inaccurate financial records. The sheriff relied heavily on accounting staff and did not provide sufficient oversight of accounting and reporting functions. Because the sheriff is not providing adequate oversight of daily activities, the auditor discovered the following accounting and reporting errors:

- Receipts were not batched and deposited intact daily.

- No bank reconciliations were prepared for the sheriff's fee or payroll accounts for calendar year 2014.
- The receipts and disbursements ledgers were not complete and accurate resulting in numerous audit adjustments.
- The quarterly financial report was not readily available to the auditors because the bookkeeper failed to post receipts to the ledger during calendar year 2014. The sheriff's bookkeeper did not have the necessary accounting skills to post receipts to the ledger and the county treasurer was asked to create a receipts ledger for the sheriff.
- There were 14 checks totaling \$31,652 not posted to the disbursements ledger.
- 2015 disbursements were posted to the 2014 ledgers.
- The payroll revolving account has a deficit totaling \$30,246, which has accumulated since calendar year 2011.
- The quarterly financial report was materially misstated.
- The sheriff did not present his budget to the fiscal court until May 21, 2014.
- The sheriff did not present his annual settlement to the fiscal court.
- The sheriff exceeded the maximum deputy salary limit approved by the fiscal court by \$35,634.
- The sheriff overspent budgeted expenditures approved by the fiscal court in the amount of \$44,335.
- Calendar year 2013 disbursements totaling \$1,070 were paid from the 2014 fee account.
- The sheriff's 2014 fee account has a deficit of \$14,011.

By not ensuring sufficient oversight and adequate internal controls, the risk of material financial statement misstatement is increased and resulted in a deficit of \$14,011 in his official bank account. The noted weaknesses, such as inadequate segregation of duties and inaccurate and incomplete financial reports and ledgers could affect the sheriff's ability to ensure that financial data is recorded, processed, and reported in an accurate and reliable manner. This also impacts the sheriff's ability to ensure that assets were sufficiently safeguarded. The cumulative effect of these control weaknesses increases the risk of material misstatement caused by error or fraud.

Management has a responsibility to design and implement internal controls that provide reasonable assurance regarding the reliability of financial reporting. Internal control is a management process for keeping an entity on course in achieving its business objectives. Internal controls should ensure resources are protected from waste, loss, and misuse and ensure reliable data is obtained, maintained, and fairly disclosed. Entities are required to establish internal controls to provide reasonable assurance that the recording, processing, and reporting of data is properly performed within the framework of their financial management systems.

KRS 68.210 gives the state local finance officer the authority to prescribe a uniform system of accounts. The minimum requirements for handling public funds, as stated in the Department for Local Government's (DLG) *County Budget Preparation and State Local Finance Officer Policy Manual*, include making deposits daily and intact, preparing monthly bank reconciliations, and having original books of entry for receipts and disbursements. The manual also requires "the fiscal court approve a calendar year budget for each fee office as a component of the county's budget preparation process by January 15 of each year."

KRS 134.192(1) states in part that "[e]ach sheriff shall annually settle his or her accounts with the department, the county, and any district for which the sheriff collects taxes on or before September 1 of each year."

Additionally, KRS 134.160 requires the following:

(2)(c) The sheriff shall balance all accounts on a monthly basis unless otherwise provided by law. The cost of maintaining records and accounts in whatever form shall be paid for as other county records.

(3) All payments received by the sheriff shall be entered immediately by the sheriff on his or her books. The sheriff may provide a receipt specifying the amount and to what account the payment was credited to the person making the payment.

(4) The sheriff shall obtain a receipt for all disbursements made by the sheriff.

[ . . . ]

(6) The sheriff shall keep all books and accounts in the manner and form required by the department.

The following recommendations are supplemented by additional recommendations presented throughout this report:

- The sheriff should be more diligent in the day-to-day operations of his office by providing direct oversight of financial reporting for all receipts and disbursements.
- The sheriff should implement internal controls over the financial accounting system that ensure an adequate internal control structure, including management oversight; provides reasonable assurance that assets are safeguarded and transactions are processed in accordance with applicable laws and regulations; and transactions are recorded, reconciled, processed, and summarized to permit the preparation of reliable financial data.
- The sheriff should segregate duties so that no individual can both create and conceal fraudulent activity or commit undetected material errors.
- The sheriff should provide and require adequate training for accounting personnel to ensure that each employee understands both the activities and the accounting principles needed for their positions.
- The sheriff should implement sufficient supervisory review of key functions and activities and ensure managers clearly understand their roles in the supervisory process. All supervisory reviews should be evidenced in writing.

*Sheriff's Response: Reminder, these are four year old errors that were previously made from a prior office manager. The majority of items listed have been corrected. For years the staff has been replaced by employees' who are competent and experienced. I feel the majority of these comments were personal opinions rather than factual statements. A new process has been in place pertaining to receipts ledger, quarterly reports, control over disbursements, etc. What this report fails to state is that the money reported that states a deficit is actually from payroll paid out in January to employees that worked in December. The budget did exceed the limit, however the word budget is defined as an "estimate", often itemized, of expected income and expense of an itemized allotment of funds, time, etc. for a given period. We simply missed our estimate. We have also purchased a new accounting program that has helped with any previous complications with posting to ledgers. As far as asking the treasurer for help, this was due to the fact that she also shares the same accounting program and was training me on to the use of the program. The treasurer is an asset to the courthouse and lends her knowledge to others as well as myself. I do not agree that the sheriff 2014 has a deficit in the 2014 fee account. This was payroll that was paid for time worked. Funds are at zero January 1. However, when employees work the last week or so in December the payroll should be paid out of the old account. Therefore, the payroll does not have a deficit indicated as it sounds.*

*The auditors' response to paying out of a old account at the first of the year is to lay employees off and close the office. The sheriff needs his deputies and office staff and feels strongly that laying staff off during Christmas isn't justified. This is a true and accurate explanation as to why we received that comment.*

*Annual settlement can't be taken in front of the fiscal court until our quarterly report ends on September 30<sup>th</sup>. We will always get his comment due to we don't have the information during this time the state auditors office feels that we should.*

Auditor's Reply: There are procedures in place for any fee official to get their budget amended if the estimates are incorrect. In order to determine if actual disbursements exceed budgeted disbursements, the official would have to maintain receipt and disbursement ledgers, prepare complete and accurate quarterly reports, and prepare timely bank reconciliations.

Per statute, the annual settlement for the quarter and year ended December 31 is to be settled and presented to the fiscal court by the next September 30, giving the office nine entire months to reconcile and settle the accounts.

The audit comment does not suggest laying off employees. December payroll and withholding payments paid in January should be paid from the following year's account, which is the same for all other payments made in January.

**The sheriff did not have internal controls over financial reporting:** The sheriff's office did not have internal controls in place over accounting functions, including financial reporting. The sheriff had a bookkeeper, an office manager, and one or two deputy clerks in his fee and tax office during calendar year 2014. The sheriff authorized both the bookkeeper and the office manager to collect receipts, make deposits, post to the ledger, write checks, and prepare bank reconciliations. The bookkeeper quit in September 2014, leaving the office manager to perform most bookkeeping functions from September 2014 until December 31, 2014. The bookkeeper and deputy clerks collected fee receipts. The bookkeeper and the office manager posted items to the receipts ledger. Neither the bookkeeper nor the office manager batched receipts daily, made daily deposits, or posted to the receipts ledger daily. The bookkeeper and the office manager prepared checks for payment of expenses and posted checks to the disbursements ledger. The sheriff and the office manager signed the checks. Bank accounts were not reconciled monthly to the sheriff's ledgers for the fee account during calendar year 2014. The county treasurer prepared bank reconciliations for the payroll account. Reporting errors could have been found monthly if bank reconciliations had been performed timely by the sheriff's office.

As previously described, the sheriff has not structured his office in a way to ensure that bookkeeping functions are being completed accurately, timely, and that duties are segregated over receipts, disbursements and the reconciliation process. The sheriff also did not provided sufficient oversight of the financial reporting process, as noted in Finding 2014-001.

Without proper management oversight and strong internal controls, the sheriff cannot ensure the fee account financial information is complete and accurate. Internal controls should be implemented and duties should be segregated to decrease the risk of misappropriation of assets, errors, and inaccurate financial reporting to external agencies. By not segregating these duties, there is an increased risk of undetected misappropriation of assets either by error or fraud. Internal controls and proper segregation of duties protect employees and the sheriff in the normal course

of performing their daily responsibilities. Good internal controls dictate the same employee should not be in a position to initiate, record, and reconcile the same transaction.

We recommend the sheriff's office implement strong oversight and internal controls, including segregation of duties. Employees receiving payments and preparing deposits should not post to the receipts ledger and prepare bank reconciliations. Employees preparing and signing checks should not post to the disbursements ledger and prepare bank reconciliations. We recommend the sheriff take on the responsibility of preparing or reviewing the daily deposits, receipts and disbursements ledgers, and bank reconciliations. These reviews must be documented in a way that indicates what was reviewed, by whom, and when.

*Sheriff's Response: Matter has been addressed and corrected, staff has been replaced by experienced competent employees. This is an old audit and should this not factor in to current practices.*

**The sheriff did not submit quarterly financial reports to the Department for Local Government as required by law:** The fourth quarter report (year-end financial statement) was not submitted to the Department for Local Government's (DLG) state local finance officer. The sheriff did not oversee the daily operations of his office as stated in Finding 2014-001 and did not provide adequate training for the accounting staff. Failure to comply with these regulations resulted in a lack of availability of financial records to approving authorities and noncompliance with DLG reporting requirements. KRS 68.210 authorizes the state local finance officer to require officials from local governments to submit financial reports. Quarterly reports for fee officials are to be submitted by the 30th day following the close of the quarter in order to satisfy this requirement. We recommend the sheriff ensure quarterly reports are prepared and submitted by the 30th of each month following the close of each quarter.

*Sheriff's Response: This issue has been addressed and corrected for years now. Again, this is a four year old audit and doesn't reflect on the current office procedures.*

**The Magoffin County Sheriff has a deficit of \$14,011 in his official bank account:** The Magoffin County Sheriff has a deficit of \$14,011 in his 2014 fee account. This deficit is a result of failure to post payroll disbursements to the ledger. The sheriff maintained a separate payroll account, which he has used since January 2011. The sheriff's bookkeeper prepared checks for the payroll account and the county treasurer prepared bank reconciliations. Bank reconciliations were not prepared timely each month. The payroll account should reconcile to zero each month; however, the sheriff's reconciled book balance in the payroll account as of December 31, 2014, was \$16,882. The sheriff did not transfer gross payroll into the payroll account each pay period and did not pay withholdings for Federal Insurance Contributions Act (FICA), federal withholdings, state withholdings, or retirement withholdings to the appropriate agencies.

The failure to reconcile the payroll account to zero monthly and pay withholding agencies timely resulted in additional cash in the payroll account. Any cash left in the payroll account as of December 31 of each calendar year should be turned over to the fiscal court as excess fees. Because the sheriff failed to reconcile the payroll account to zero each month, a cash balance was left in the payroll account as of January 1, 2014. The sheriff used the remaining cash balance in the payroll account from prior years to pay the payroll for calendar year 2014, resulting in a deficit in the 2014 fee account. The sheriff did not have qualified accounting staff who were trained on the uniform system of accounts set forth in KRS 68.210 and failed to oversee the daily activities of his office as noted in Finding 2014-001. The sheriff's staff failed to transfer gross payroll to

the payroll account, reconcile the payroll account to zero each month, and did not pay withholding to the proper agencies during calendar year 2014. As a result, the sheriff personally owes \$14,011 to cover the deficit in his calendar year 2014 fee account.

KRS 68.210 authorizes the state local finance officer to implement a system of uniform accounts that set the minimum requirements for the handling of public funds for government officials. Books of original entry for receipts and disbursements, along with monthly bank reconciliations, are included in these requirements. Receipts and disbursements ledgers should be prepared from source documents and should be updated daily. Receipts should be posted from daily checkout sheets while disbursements should be posted from the actual checks and debit memos, if applicable. Monthly bank reconciliations should also be prepared and should include all receivables and liabilities for that month. Each month, the bank reconciliation should be reconciled to the receipts and disbursements ledgers.

We recommend the sheriff deposit personal funds of \$14,011 into his 2014 official bank account. In order to prevent this from recurring, we recommend the sheriff close the payroll account and pay all payroll directly from the fee account.

*Sheriff's Response: A lengthy response was given in a previous comment. This was due to December payroll that was worked in December that was paid in January. No deficit exists. This deficit exists in numbers only not actual funds.*

Auditor's Reply: An actual deficit exists in the account when all amounts owed from the account are paid. Refer to the Auditor's Reply after Finding 2014-001 for more information.

**The payroll revolving account has a deficit of \$30,246:** The sheriff maintained an ongoing payroll account from January 11, 2011 through August 30, 2016. The sheriff used the payroll account for payroll disbursements. Money was deposited into the payroll account from the fee account to pay net wages to employees, FICA tax, federal, state and local withholdings, and retirement withholdings. All money deposited into the payroll account should be disbursed for payroll related purposes. The payroll account should reconcile to zero each month. Any cash left in the payroll account as of December 31 of each calendar year should be turned over to the Magoffin County Fiscal Court as excess fees.

The Magoffin County Treasurer prepared monthly bank reconciliations for the sheriff's office. However, the monthly bank reconciliations did not reconcile to zero each month and the sheriff had cash left over at the end of each month and each calendar year. The sheriff did not pay the payroll liabilities noted in calendar years 2011, 2012, and 2013, resulting in excess cash in the payroll account. The sheriff used the excess cash accumulated in the payroll account to pay payroll disbursements for calendar year 2014.

Assets

Uncollected Receivables:

2013 Fee Account

Due From 2016 Fee Account for Transfer on 9/8/16 \$ 31

Total Assets \$ 31

Liabilities

Unpaid Obligations:

Due to 2011 Fee Account for ending payroll cash balance 2,385

Due 2012 Fee Account for ending payroll cash balance 6,061

Due Magoffin Fiscal Court for 2014 Retirement Withholdings 17,874

Due Magoffin Fiscal Court For 2014 Occupational Tax Withholding 3,424

Net Sheriff Salary Due for Prior Years 533

Total Unpaid Obligations 30,277

Total Liabilities 30,277

Payroll Account Balance as of Audit Date \$ (30,246)

KRS 68.210 authorizes the state local finance officer to implement a system of uniform accounts that set the minimum requirements for the handling of public funds for government officials. Monthly bank reconciliations should also be prepared and should include all receivables and liabilities for that month. Each month, the bank reconciliation should be reconciled to the receipts and disbursements ledgers.

Additionally, KRS 64.820 states:

- (1) The fiscal court shall collect any amount due the county from county officials as determined by the audit of the official conducted pursuant to KRS 43.070 and KRS 64.810 if the amount can be collected without suit.
- (2) In the event the fiscal court cannot collect the amount due the county from the county official without suit, the fiscal court shall then direct the county attorney to institute suit for the collection of the amount reported by the Auditor or certified public accountant to be due the county within ninety (90) days from the date of receiving the Auditor's or certified public accountant's report.

We recommend the sheriff eliminate the deficit in the payroll revolving account. The sheriff should settle the 2014 fee account as stated in Finding 2014-004. After settling the 2014 fee account, the sheriff will have available funds to pay the liabilities detailed in the schedule above. We also recommend the sheriff discontinue the use of an ongoing payroll account and pay all payroll from the fee account.

*Sheriff's Response: A lengthy response was given in a previous comment. This was due to December payroll that was worked in December that was paid in January. No deficit exists. This deficit exists in numbers only not actual funds.*

**The sheriff had \$1,600 in disallowed expenditures:** This is a repeat finding and was included in the prior year audit report as Finding 2013-03. The sheriff expended a total of \$1,600 for the following disallowed items:

- A total of \$530 was paid for coffee, which is not necessary to the operation of the office.
- A total of \$1,070 was paid for invoices dated in calendar year 2013.

This condition is a result of a lack of internal controls over disbursements and payroll, as described in Findings 2014-007 and 2014-011. The disallowed disbursements result in taxpayer money being misspent and the sheriff personally owing \$1,600 to the 2014 Fee account. In 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 sheriff reimburse the 2014 Fee account \$1,600 from his personal funds for these disallowed disbursements. Furthermore, we recommend the sheriff only expend funds for allowable purposes and that invoices paid are dated for the calendar year in which they are paid.

*Sheriff's Response: The sheriff now personally provides coffee for his constituents who request it. Whether offering coffee to the public is beneficial could be debatable: regarding the invoices, if the invoices are dated for 2013 but not received until 2014, it is only logical they be paid in 2014, most suppliers' bill on net 30. I can't imagine anyone would want to provide us with goods or services during the month of December if that were the case.*

**Auditor's Reply:** Audit procedures allow for payment of invoices dated in December 2013 to be paid in January 2014 from the 2013 fee account. In the instances referred to above, services were provided in December 2013 but paid from the 2014 fee account on February 21, 2014 and April 4, 2014. Had the invoices been paid timely from the 2013 fee account, it would not be an issue.

**The sheriff lacked internal controls over disbursements:** The sheriff's office lacked internal controls over disbursements. The lack of adequate review over disbursements and failure to adhere to the administrative policy led to multiple discrepancies. Invoices were not properly cancelled upon payment, leading to at least one invoice being paid twice. There were no review procedures in place to eliminate or reduce errors. Due to the lack of effective controls, numerous exceptions were noted as follows:

- 2013 disbursements were paid from the 2014 Fee account.
- Disallowed disbursements totaling \$1,600 were noted (see Finding 2014-006).
- Disbursements totaling \$31,652 were not posted to the ledgers (see Finding 2014-001).
- 2015 disbursements were posted to the 2014 ledgers (see Finding 2014-001).
- Invoices were not properly maintained and not canceled upon payment.
- One invoice was paid twice.

Good internal controls dictate that adequate controls and sufficient review is necessary to reduce the risk of errors and misstatements. We recommend the sheriff implement procedures that strengthen controls over disbursements by:

- Ensuring disbursements are paid from appropriate accounts.
- Ensuring disbursements are for allowable purposes only.



- Ensuring all invoices are maintained and all invoices are canceled upon payment to prevent duplicate payments.
- Ensuring all disbursements are posted to the disbursement ledger and quarterly reports.

*Sheriff's Response: This matter has been addressed and corrected. Again this was four years ago. A new process was implemented four years ago.*

**The sheriff did not maintain controls over fuel cards:** The sheriff's staff used fuel cards to purchase gasoline during calendar year 2014. According to the monthly statements, the sheriff, deputies and office staff were issued fuel cards. One fuel card was issued to the sheriff's bookkeeper and one card was issued to a deputy clerk. The fuel card statements show that the bookkeeper's card charged a total of \$9,551 and the deputy clerk's card charged \$7,512 for the calendar year. Fuel cards require the user to input vehicle mileage when purchasing fuel. Based on the vehicle mileage listed on the monthly statements, it appears two separate vehicles used the fuel card issued to the sheriff's bookkeeper. The sheriff did not review fuel statements. The bookkeeper printed the monthly statements and wrote checks to the vendor.

As stated in Finding 2014-001, the sheriff did not oversee the daily operations of his office. The sheriff's office did not maintain documentation of who used fuel cards and the office did not maintain daily vehicle logs. Because the sheriff did not have controls over fuel cards, auditors were unable to determine who actually used fuel cards issued to the bookkeeper and the deputy clerk in calendar year 2014. The lack of controls over fuel cards could also lead to theft or misappropriation. Good accounting practices require sufficient accounting records to ensure the fee account is being managed appropriately. Sufficient oversight by the sheriff is necessary to ensure all laws and regulations, as well as good accounting practices, are followed. We recommend the sheriff implement strong internal controls over fuel cards. Fuel cards should be issued solely to the sheriff and deputies. The sheriff should maintain a log or other documentation if someone other than the cardholder uses the fuel card.

*Sheriff's Response: [Vendor is] extremely rigid regarding the issue of cards. Office staff were given cards when deputies needed a card, but were not available to answer personal questions needed to be issued a card. This issue has been addressed and corrected for a while now. Cards are allotted only to deputies and one member of the office staff. The office staff card is used when CSO does transports. There are no extra cards. If a card becomes damaged or lost, deputies use their own funds until a card is reissued. Deputies are reimbursed for these charges. Mileage logs are now in place and are compared to the mileage give to the pump. This comment is the first time fuel cards usage has been addressed on an audit. We have not now, nor have we ever, used [Vendor] Fuel Cards inappropriately! Again, this was four years ago, and if we had known to implement a better process then, we would have done so.*

**The sheriff overcharged taxpayers for vehicle inspections:** The Magoffin County Sheriff overcharged taxpayers for vehicle inspections during calendar year 2014. When an out-of-state vehicle is licensed in the state of Kentucky taxpayers are required to have their vehicle and title application inspected by the sheriff's office. Auditor examined copies of daily receipts issued to customers and found that customers were charged \$10 for on-site vehicle inspections and \$20 when a certified inspector had to travel to the site of the vehicle. The sheriff's office manager directed staff to charge the rates noted above for vehicle inspections during calendar year 2014. As a result, taxpayers were overcharged \$5 for vehicles inspected in calendar year 2014. KRS 186A.115(2)(b) states "[t]here shall be a five dollar (\$5) fee for this certification, payable to the

sheriff's office, upon completion of certification.” KRS 186A.115(2)(c) states, “[t]here shall be an additional fee of ten dollars (\$10) per trip when it becomes necessary for the certified inspector to travel to the site of the vehicle rather than bringing the vehicle to the sheriff's inspection area[.]” We recommend the sheriff comply with KRS 186A.115(2)(b) and KRS 186A.115(3)(b) by charging taxpayers \$5 for vehicle inspections and \$15 when traveling to the site of the vehicle.

*Sheriff's Response: I take full accountability for this oversight. This was corrected the moment I learned it was not in compliance to KRS.*

**The sheriff assigned court security officers paid by the Administrative Office of the Courts to work in his tax and fee office:** The sheriff hires court security officers (CSOs) to work in the Magoffin County Justice Center to provide security for the circuit and district courts. CSOs may also provide additional security in the justice center. The number of court security officers who provide additional security at the justice center is to be determined by the sheriff, but is authorized/approved by the circuit or district judge. The sheriff's office requests monthly reimbursement for court security salaries from the Kentucky State Administrative Office of the Courts (AOC). The sheriff is required to submit timesheets for each CSO who provides security at the Justice Center in order to be reimbursed by AOC. Auditors examined the timesheets submitted to AOC and compared the timesheets to the sheriff's daily receipts issued to customers. We determined that at least two CSOs worked in the sheriff's fee and tax office issuing receipts to customers for time billed to AOC. If a CSO is not physically present in the justice center, the sheriff cannot request reimbursement from AOC for time worked.

The sheriff did not ensure his office was in compliance with KRS 64.092 by confirming court security officers were physically present in the Magoffin County Justice Center in order to receive reimbursement for salaries from AOC. The sheriff requested and received reimbursement from AOC for time CSOs were not physically present in the Magoffin County Justice Center. According to KRS 64.092, court security officers must be physically present in the courtroom or the Justice Center at all times. KRS 64.092(1) states, “[c]ompensation shall be provided only for the actual time for which the sheriff or other officer is ordered to be physically present in the courtroom or is ordered to be physically present to discharge a duty ordered by the Chief Circuit Judge, Chief District Judge, or Judge of the Court of Appeals, as appropriate.”

We recommend the sheriff comply with KRS 64.092 by discontinuing the practice of requesting reimbursement from AOC for time that certified CSOs are not physically present in the Magoffin County Justice Center.

*The Auditor of Public Accounts gives officials an opportunity to respond in writing to the comments in the audit report. Portions of the sheriff's response are not included in this report because some of the passages were personal, unrelated to the audit, and not part of a corrective action plan.*

*Sheriff's Response: AOC guidelines regarding the duties of CSO's clearly states that CSOs are allowed to provide security services for the court within the immediate area of the court house. The sheriff office is within the immediate area of the courthouse. The receipts in question, were done by one employee, not two. They were pertaining to civil process, which is one of the duties to be performed by CSO's. (Copy of Receipts Attached). Nowhere in the list of prohibited conduct does it state a CSO cannot write a receipt for the duty he or she has performed as part of their CSO duties. Employees are our employees, not just CSO's. They are always offered extra work before it is offered to anyone outside the department. We have issued checks to CSOs that have nothing to do with their*

*AOC pay. The other auditor, had a detailed explanation given to her but this auditor never asked. It only makes sense that any extra duties be given to CSOs. They only make \$9.00 an hour and they have mouths to feed and bills to pay. They should be allowed to pick up extra work whenever it is available. This comment is being taken as a personal attack on this office and its staff.*

Auditor's Reply: The auditor documented two CSO employees that had multiple instances of issuing receipts for various fees, like car inspections, CCDW, and accident reports. The receipts were made on days that they were issued a payroll check, to be reimbursed by AOC for CSO duties. On those days there was no record of a separate payroll check being issued by the sheriff's office for the additional work performed at sheriff's office. The audit is based on evidence available and undergoes supervisory reviews to ensure the findings are accurate.

**The sheriff did not have adequate controls over the payroll process:**

We noted the following issues regarding payroll:

- The sheriff did not correctly compensate employees for hours worked in excess of 40 hours per week.
- Employees were not paid compensatory time and a half for hours worked in excess of 40 hours per week.
- The sheriff did not have a written statement on file from employees indicating they chose to accept compensatory time in lieu of overtime.
- The sheriff did not maintain documentation for employee leave balances. The sheriff allowed employees to track compensatory time earned and leave time used.
- The sheriff's office does not have a written policy regarding employee vacation and sick leave earned and used.

The sheriff's staff was unaware of the overtime rules in regard to overtime calculation and compensation. Employees may have taken too much leave in calendar year 2014 because the sheriff failed to document compensatory time and vacation hours. KRS 337.285 requires employees to be compensated for hours worked in excess of forty per week at a rate of one and one-half times the hourly wage rate. Employers are also required to obtain written statements from employees indicating that they choose to accept compensatory time in lieu of payment for overtime. Overtime must be paid if worked in absence of the employee's written statement.

We recommend the sheriff ensure compensatory time for employees is granted in accordance with KRS 337.285. We also recommend the sheriff's office implement a written policy over vacation and sick leave and request the county attorney review the policy for compliance with applicable laws and regulations.

*Sheriff's Response: This matter has been addressed and corrected. Compensatory time is no longer a part of payroll.*

**The sheriff did not remit payroll withholding funds to proper agencies and incurred significant penalties and interest charges:** This is a repeat finding and was included in the prior year audit report as Finding 2013-02. The sheriff withheld payments from employee payroll checks for Federal Insurance Contributions Act (FICA), retirement, federal, state and local withholdings as required. However, the sheriff did not remit employee withholdings to the appropriate agencies. The sheriff made one payment to the Internal Revenue Service (IRS) for FICA, federal withholdings, and matching on April 6, 2015. January 2014 through August 2014

state withholdings were not paid until January 28, 2015. As of the audit date, the sheriff's payroll account owes the Magoffin County Fiscal Court \$17,874 for retirement withholding funds. The sheriff also owes \$3,424 in occupational tax withholdings to the Magoffin County Fiscal Court. The sheriff failed to implement strong internal controls over payroll. The sheriff incurred significant penalties and interest charges from the IRS for failure to pay withholding and matching amounts and failure to file wage reports for the entire calendar year. The penalties and interest totaled \$32,041 for calendar year 2014. Penalties and interest have accrued for other calendar years as well, resulting in a total of \$58,039 due to the IRS. Payment of these penalties and interest is not an allowable disbursement of the fee account because they are a waste of taxpayer resources and are indicative of poor financial management practices. KRS 141.330 states that employers shall, on or before the last day of the month following the close of each quarterly period, pay over to the department the tax required to be withheld. Title 26 of the United States Code outlines requirements for FICA withholding and matching requirements in addition to federal income tax withholding requirements. 103 KAR 18:010 requires all employers to deduct, withhold, and pay to the state taxes required to be withheld.

We recommend the sheriff remit payments to withholding agencies in a timely manner. We also recommend the sheriff pay the Magoffin County Fiscal Court \$17,874 for retirement withholdings and \$3,424 in occupational tax withholdings from the payroll account for calendar year 2014 as stated in Finding 2014-005.

*Sheriff's Response: Mistakes have been made, but have since been corrected. Everything owed has been paid. No taxes are owed to either the federal or the state. Penalties are still owed. We have tried to pay them but the magistrates on the fiscal court will not allow them to be paid. We have the money, we want to pay, our hands are tied.*

**Auditor's Reply:** The funds are owed to the Magoffin County Fiscal Court. Penalties and interest incurred from late payment to the IRS are not allowable expenses of a fee account and cannot be paid from remaining excess fees.

**The sheriff did not settle his 2011 fee account:** The sheriff's 2011 fee account owes excess fees of \$17,978 to the fiscal court. The sheriff was aware that there were receivables associated with the 2011 fee account and that he owes personal funds to the 2011 fee account for disallowed disbursements. Due to lack of oversight as discussed in Finding 2014-001, the amounts due per the 2011 audit were not collected and excess fees were not paid to the fiscal court. In order to settle the 2011 fee account, the sheriff should collect the receivables detailed in the schedule below and pay excess fee to the fiscal court.

Assets

Uncollected Receivables:

Commissions Due From 2010 Tax Account	\$	1,169
Due From 2010 Tax Account For Refunds Paid		498
Commissions Due From 2010 Unmined Coal Tax Account		6,026
Interest Due From 2010 Unmined Coal Tax Account		37
Add on Fees Due From 2010 Unmined Coal Tax Account		2,059
Due From Payroll Account		2,385
Due From Sheriff Personal Funds For Disallowed Expenditures		5,804
		<hr/>
Total Fund Balance Due To Fiscal Court For Calendar Year 2011 Excess Fees	\$	<u>17,978</u>

Failure to settle accounts timely increases the risk that misappropriation of assets or fraud will occur and deprives the fiscal court of much needed resources for a significant time period.

According to KRS 134.192:

(1) Each sheriff shall annually settle his or her accounts with the department, the county, and any district for which the sheriff collects taxes on or before September 1 of each year. [ . . . ]

(12) At the time he or she files the statements required by subsection (11) of this section, the sheriff shall pay to the governing body of the county any fees, commissions, and other income of his or her office, including income from investments, which exceed the sum of his or her maximum salary as permitted by the Constitution and other reasonable expenses, including compensation of deputies and assistants. The settlement for excess fees and commissions and other income shall be subject to correction by audit conducted pursuant to KRS 43.070 or 64.810.

The sheriff's calendar year 2011 annual settlement and excess fees payment should have been made by September 1, 2012.

Additionally, KRS 64.820 states:

(1) The fiscal court shall collect any amount due the county from county officials as determined by the audit of the official conducted pursuant to KRS 43.070 and 64.810 if the amount can be collected without suit.

(2) In the event the fiscal court cannot collect the amount due the county from the county official without suit, the fiscal court shall then direct the county attorney to institute suit for the collection of the amount reported by the Auditor or certified public accountant to be due the county within ninety (90) days from the date of receiving the Auditor's or certified public accountant's report.

We recommend the sheriff establish procedures to ensure an annual settlement is presented to the fiscal court by September 1 of each year and excess fees be paid at that time. Excess fee settlements are subject to correction by audit, so even though receivables increased the amount of excess fees owed after September 1, the sheriff should have already paid the excess fees owed per his annual settlement. We also recommend the sheriff collect all receivables and pay the fiscal court \$17,978 for calendar year 2011 excess fees.

*Sheriff's Response: We are working diligently to correct this matter by the date given above. (12/21/18).*

**The sheriff did not settle his 2012 fee account:** The sheriff's 2012 fee account owes excess fees of \$69,278 to the fiscal court. The sheriff had cash totaling \$58,543 in his 2012 fee account and receivables totaling \$10,735. However, on January 16, 2017, the sheriff transferred \$58,543 to his 2017 fee account. The sheriff stated that the fiscal court gave him 2012 excess fees. On October 8, 2015, the fiscal court had a special meeting and approved the sheriff's 2014 county tax settlement. The fiscal court minutes state "presented the Court with the 2014 Tax Settlement. Judge Hardin made a motion to accept and stated the sheriff's office could keep the remainder of money left over for excess fees." The fiscal court order does not address 2012 excess fees. The sheriff should have written a check to the fiscal court for calendar year 2012 excess fees. The

sheriff was aware that there were receivables associated with the 2012 fee account and that excess fees were due to the fiscal court. Due to lack of oversight as discussed in Finding 2014-001, the amounts due per the 2012 fee audit were not collected and excess fees were not paid to the fiscal court. In order to settle the 2012 fee account, the sheriff should collect the receivables listed below and pay excess fees to the fiscal court.

In order to settle the 2012 fee account, the sheriff should collect and pay the following:

Assets

Cash in Bank	\$
Uncollected Receivables:	
Due From Payroll Account For Payroll Account Balance on 12/31/2012	6,061
Due From 2013 Fee Account for January 2013 Payroll	4,674
Due From Calendar Year 2017 Fee Account	<u>58,543</u>
Total Fund Balance Due To Fiscal Court As Excess Fees	<u>\$ 69,278</u>

Note: Fund Balance amounts differ from amounts reported in the calendar year 2012 audit report due to activity in the account after the date of that audit report.

Because the sheriff transferred the cash balance left in his 2012 fee account to his 2017 fee account, the sheriff has \$58,543 in his 2017 fee account that is due to the fiscal court for calendar year 2012 excess fees. Failure to settle accounts timely increases the risk that misappropriation of assets or fraud will occur and deprives the fiscal court of much needed resources for a significant time period. According to KRS 134.192:

- (1) Each sheriff shall annually settle his or her accounts with the department, the county, and any district for which the sheriff collects taxes on or before September 1 of each year. [ . . . ]
- (12) At the time he or she files the statements required by subsection (11) of this section, the sheriff shall pay to the governing body of the county any fees, commissions, and other income of his or her office, including income from investments, which exceed the sum of his or her maximum salary as permitted by the Constitution and other reasonable expenses, including compensation of deputies and assistants. The settlement for excess fees and commissions and other income shall be subject to correction by audit conducted pursuant to KRS 43.070 or 64.810.

The sheriff's calendar year 2012 annual settlement and excess fees payment should have been made by September 1, 2013. Additionally, KRS 64.820 states:

- (1) The fiscal court shall collect any amount due the county from county officials as determined by the audit of the official conducted pursuant to KRS 43.070 and 64.810 if the amount can be collected without suit.
- (2) In the event the fiscal court cannot collect the amount due the county from the county official without suit, the fiscal court shall then direct the county attorney to institute suit for the collection of the amount reported by the Auditor or certified public accountant to be due the county within ninety (90) days from the date of receiving the Auditor's or certified public accountant's report.

We recommend the sheriff establish procedures to ensure an annual settlement is presented to fiscal court by September 1 of each year and excess fees be paid at that time. Excess fee settlements are subject to correction by audit, so even though receivables increased the amount of excess fees owed after September 1, the sheriff should have already paid the excess fees owed per his annual settlement. We also recommend the sheriff collect all receivables and pay the fiscal court \$69,278 for calendar year 2012 excess fees.

*Sheriff's Response: We are working diligently to correct this matter by the date given above (12/21/18).*

**The sheriff did not settle his 2013 fee account:** The sheriff's 2013 fee account is in a deficit of \$130. The sheriff had cash totaling \$10,571 in his 2013 fee account. There were receivables and liabilities noted in the prior year exit conference. The sheriff did not collect or pay any of the receivables or liabilities. However, on September 7, 2016, the sheriff transferred the cash balance in the 2013 fee account of \$10,571 to his 2016 fee account. The sheriff stated that the fiscal court gave him 2013 excess fees. On October 8, 2015, the fiscal court had a special meeting and approved the sheriff's 2014 county tax settlement. The fiscal court minutes state "presented the Court with the 2014 Tax Settlement. Judge Hardin made a motion to accept and stated the Sheriff's office could keep the remainder of money left over for excess fees." The fiscal court order does not address 2013 excess fees. The sheriff was aware that there were receivables and liabilities associated with the 2013 fee account. Due to lack of oversight as discussed in Comment 2014-001, the amounts due per the prior year audit did not get collected and paid. In order to settle the 2013 fee account, the sheriff should collect and pay the following:

Assets

Uncollected Receivables:

Sheriff Add-On Fees Due From 2012 Tax Account	\$ 5,688
Interest Due From 2012 Tax Account	162
Commissions Due From 2012 Tax Account	497
Interest Due From 2012 Unmined Coal Tax Account	4
Payroll Due From 2014 Fee Account For January 2014 Payroll	7,844
Due From 2014 Fee Account For Delinquent Tax Payments	253
Delinquent Tax Commission Due From 2014 Fee Account	603
Due Personally From Sheriff For Disallowed Donation	41
Due From Calendar Year 2016 Fee Account	<u>10,571</u>

Total Assets	25,663
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Liabilities

Unpaid Obligations:

Due To 2012 Fee For January 2013 Payroll	\$ 4,674
Tax Commission Overpayment Due to 2012 Tax Account	896
Due To 2013 Tax Account For Commission Overpayment	2,637
Due To 2011 Tax Account For State Refund	40
Net Due To Sheriff for Salary Underpayment	533
Occupational Tax Due City of Salyersville	640
Retirement Withholdings Due Magoffin Fiscal Court	<u>16,373</u>

Total Unpaid Obligations \$ 25,793

Total Liabilities \$ 25,793

Total Fund Deficit As of Audit Date \$ (130)

Note: Fund Balance amounts differ from amounts reported in the calendar year 2013 audit report due to activity in the account after the date of that audit report.

Failure to settle accounts timely increases the risk that misappropriation of assets or fraud will occur and deprives the fiscal court (and other entities due payments) of much needed resources for significant time periods. After all receivables are collected, the sheriff will need to deposit personal funds of \$171 to cover the 2013 deficit of \$130 and disallowed items totaling \$41. The sheriff will then have funds available to pay all the liabilities listed in the schedule. According to KRS 134.192:

- (1) Each sheriff shall annually settle his or her accounts with the department, the county, and any district for which the sheriff collects taxes on or before September 1 of each year. [ . . . ]
- (12) At the time he or she files the statements required by subsection (11) of this section, the sheriff shall pay to the governing body of the county any fees, commissions, and other income of his or her office, including income from investments, which exceed the sum of his or her maximum salary as permitted by the Constitution and other reasonable expenses, including compensation of deputies and assistants. The settlement for excess fees and commissions and other income shall be subject to correction by audit conducted pursuant to KRS 43.070 or 64.810.

The sheriff's calendar year 2013 annual settlement and excess fees payment should have been made by September 1, 2014. Additionally, KRS 64.820 states:

- (1) The fiscal court shall collect any amount due the county from county officials as determined by the audit of the official conducted pursuant to KRS 43.070 and 64.810 if the amount can be collected without suit.
- (2) In the event the fiscal court cannot collect the amount due the county from the county official without suit, the fiscal court shall then direct the county attorney to institute suit for the collection of the amount reported by the Auditor or certified public accountant to be due the county within ninety (90) days from the date of receiving the Auditor's or certified public accountant's report.

We recommend the sheriff establish procedures to ensure an annual settlement is presented to fiscal court by September 1 of each year and excess fees be paid at that time. The sheriff should



also implement procedures to ensure the fee account does not have a deficit. If a deficit occurs, the sheriff needs to deposit personal funds to cover the deficit.

*Sheriff's Response: We are working diligently to correct this matter by the date given above (12/21/18).*

The sheriff's responsibilities include collecting property taxes, providing law enforcement and performing services for the county fiscal court and courts of justice. The sheriff's office is funded through statutory commissions and fees collected in conjunction with these duties.

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

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