



Auditor of Public Accounts
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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 2016 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: This is a repeat finding and was included in the prior year audit report as Finding 2015-001. 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 and misappropriation of funds and decrease of accuracy of records provided. 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 daily.
- Complete bank reconciliations were not prepared regularly for the sheriff's fee or payroll accounts for calendar year 2016.
- The receipts and disbursements ledgers were not complete and accurate, resulting in numerous audit adjustments.
- Payroll disbursements totaling \$26,908 were not posted to the disbursements ledger.
- Receipts on the quarterly financial report were materially misstated in the amount of \$160,846.
- Disbursements on the quarterly financial report were materially misstated in the amount of \$90,200.
- The sheriff did not present his annual settlement to the fiscal court.

By not ensuring sufficient oversight and internal controls, the risk of material financial statement misstatement is increased 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 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 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 of Local Government's (DLG) *County Budget Preparation and State Local Finance Officer Policy Manual* require that deposits be made daily and intact, prepare monthly bank reconciliations, and have original books of entry for receipts and disbursements.

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 ensure 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: This matter has been addressed and corrected. Staff has been replaced by competent, experienced employees.

The sheriff did not have internal controls over financial reporting: This is a repeat finding and was included in the prior year audit report as Finding 2015-002. 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 two deputy clerks in his fee and tax office during calendar year 2016. The sheriff authorized the office manager to collect receipts, make deposits, post to the ledger, write checks, and prepare bank reconciliations. The office manager and deputy clerks collected fee receipts. The office manager posted items to the receipts ledger. Neither the office manager nor deputy clerks batched receipts daily, made daily deposits, or posted to the receipts ledger daily. 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 2016. 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 daily operations of his office, as noted in Finding 2016-001.

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: This has been addressed and corrected. Staff have been replaced by experienced employees. Please note this office does not think who prepares the bank reconciliations should be of any concern to the auditor. This sentence serves no purpose other than to demean and/or belittle and embarrass the sheriff and his staff.

Auditor's Reply: The sheriff assigns staff to conduct bank reconciliations or may conduct them himself. Segregation of duties requires that the person performing the reconciliation to be different than the person preparing and signing checks. This is a standard application of auditing principles common to all audits. Its purpose is to improve oversight and not to embarrass, belittle, or demean any individual or office.

The sheriff did not submit quarterly financial reports to the Department for Local Government as required by law: This is a repeat finding and was included in the prior year audit report as Finding 2015-003. 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's staff did not prepare the quarterly financial reports and the staff lacked management oversight. 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 the each quarter.

Sheriff's Response: This has been addressed and corrected. Quarterly reports are balanced and submitted in a timely manner.

The sheriff did not present an annual settlement to the fiscal court for the calendar year and did not pay excess fees of \$18,255 for calendar year 2016: The sheriff did not present an annual settlement to the fiscal court, and did not pay \$18,255 in excess fees for calendar year 2016. Before the sheriff can pay excess fees in full, he will need to collect and disburse the following:

Assets		
Cash in Bank		\$ 46,786
Deposits in Transit		250
Receivables:		38,206
Due from Payroll Account for Excess Transfers		17,789
Due from 2015 STS for Add On Fees Due		747
Due from 2015 Gas & Oil for deposit error		20
Due from 2015 UMC for deposit error		2,988
Due from 2017 Fee for Receipt from Fiscal Court		7,850
Due from 2015 STS for deposit error		458
Due from 2017 Fee for Tax Commission reimbursement form BOE		31,287
Due from 2016 Tax Account for Change Drawer		1,000
Due from Sheriff for Disallowed Expenditures		<u>112</u>
Total Assets		147,493
Liabilities		
Outstanding Checks	\$ 3,980	
Paid Liabilities		<u>60,968</u>
Total Paid Obligations		64,948
Unpaid Obligations:		
Sheriff -		
Due to 2017 Fee for Fiscal Court Receipt	\$ 3,023	
Due to 2015 STS for Overpaid Commissions	2,649	
Due to 2015 Fee for Oil Commission received from BOE	1,337	
Due to 2015 Gas & Oil for Overpaid Commissions	39	
Due to 2015 UMC for Overpaid Commissions	944	
Due to Payroll Account for January 2016 expenses	26,908	
Due to Closed Accounts	<u>29,390</u>	
Total Unpaid Obligations		<u>64,290</u>
Total Liabilities		<u>129,238</u>
Total Fund Balance as of December 31, 2016		<u><u>\$ 18,255</u></u>

The sheriff did not provide a reason for failing to ensure an annual settlement was presented to the fiscal court and for not making any excess fee payments to the fiscal court. The fiscal court provides funds as needed to be used to operate the sheriff's office; therefore, it is important for the fiscal court to know the financial condition of the sheriff's office. Without presenting an annual settlement, the fiscal court is unaware of the financial condition of the sheriff's office.

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 establish procedures to ensure an annual settlement is presented to the fiscal court at the close of each year and excess fees be paid at that time.

Sheriff's Response: This matter has been addressed and corrected to the best of our ability. Our quarter ends on September 30th, therefore we are unable to present a full and accurate report to the September court meeting. We present our report to the court during the meeting that follows quarter end. Excess fees affect sheriff's commission only. The tax program did not calculate these fees correctly. Money is still in the accounts and are all accounted for.

Auditor's Reply: Fee accounts should be closed as of December 31st. Reconciling activity and completion of the annual settlement and payment of excess fees should occur promptly after.

The sheriff did not settle his 2011 fee account: This is a repeat finding and was included in the prior year audit report as Finding 2015-010. 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 a lack of oversight, 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	<u>5,804</u>
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.

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 in a reasonable time period and excess fees be paid at that time. 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 listed below.
(12/21/18)*

The sheriff did not settle his 2012 fee account: This is a repeat finding and was included in the prior year audit report as Finding 2015-011. 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 and liabilities associated with the 2012 fee account. Due to a lack of oversight as discussed in Finding 2016-001, the amounts due per the prior year audit were not collected and paid. In order to settle the 2012 fee account, the sheriff should collect and pay the following:

Assets

Cash in Bank	\$	0
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.

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 in a reasonable time period and excess fees paid at that time. We also recommend the sheriff collect all receivables and give 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 listed below. (12/21/18)

The sheriff did not settle his 2013 fee account: This is a repeat finding and was previously reported in the prior year audit report as Finding 2012-012. The sheriff did not settle his 2013 fee account. The sheriff's 2013 fee account owes excess fees of \$7,223 to the fiscal court. The sheriff had cash totaling \$10,571 in his 2013 fee account. Receivables totaling \$32,841 should have been collected and there were liabilities totaling \$25,618. 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 should have written a check to the fiscal court for calendar year 2013 excess fees. The sheriff was aware that there were receivables and liabilities associated with the 2013 fee account. Due to a lack of oversight as discussed in Finding 2016-001, 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

Cash In Bank	\$	0
Uncollected Receivables:		
Sheriff add-on fees due from 2012 tax account		5,688
Interest due from 2012 tax account		162
Commission due from 2012 tax account		497
Interest due from 2012 UMC tax account		4
Payroll due from 2014 payroll account for January 2014 payroll		10,954
Delinquent tax commissions due from 2014 fee account		603
Due personally from sheriff for disallowed donation		41
Payroll ending cash balance as of December 31, 2013		1,211
Due from payroll account for transfer		3,110
Due from calendar year 2016 fee account		<u>10,571</u>
Total Assets		32,841

Liabilities

Unpaid Obligations:		
Due 2012 fee account for January 2013 payroll	\$	4,674
Due 2013 fee account - January payroll		896
Due 2013 fee account - delinquent tax payments		2,637
Due payroll account for 2014		40
Due to sheriff for unpaid 2013 salary		358
Occupational tax due the City of Salyersville		640
Retirement withholdings due Magoffin County Fiscal Court		<u>16,373</u>
Total Liabilities		<u>25,618</u>
Total Fund Balance To Due Fiscal Court As Excess Fees	\$	<u>7,223</u>

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 of much needed resources for a significant time period. After all receivables are collected and all liabilities are paid, the sheriff will be able to close his 2013 fee account.

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 in a reasonable time period and excess fees be paid at that time. We also recommend the sheriff collect all receivables and give the fiscal court \$7,223 for calendar year 2013 excess fees.

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

The sheriff has a deficit of \$14,011 in his 2014 fee account: This is a repeat finding and was included in the prior year audit report as Finding 2015-013. 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 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 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 31st 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. 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 reoccurring, we recommend the sheriff reconcile the payroll account to zero each month and pay withholdings timely.

Sheriff's Response: The sheriff did not provide a response.

The sheriff overcharged for vehicle inspections: This is a repeat finding and was previously reported in the prior year audit report as Finding 2015-005. The Magoffin County Sheriff overcharged taxpayers for vehicle inspections during calendar year 2016. 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. Copies of daily receipts issued to customers were examined and 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 2016. As a result, taxpayers were overcharged \$5 for vehicles inspected in calendar year 2016.

KRS 64.410(2)(a) states, "[n]o officer shall demand or receive for his services [. . .] any other or greater fee than is allowed by law[.]" 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 64.410(2)(a), KRS 186A.115(2)(b), and KRS 186A.115(2)(c) by charging taxpayers \$5 for vehicle inspections and \$15 when traveling to the site of the vehicle.

Sheriff's Response: This was done based on misinformation from other agencies. It has since been corrected.

The sheriff did not properly transfer funds to the payroll account: This is a repeat finding and was included in the prior year audit report as Finding 2015-006. The sheriff maintains a separate account for payroll activity. 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. Transfers from the 2015 fee account were made in 2016 to cover January 2016 payroll activity. The bookkeeper continued to transfer to the payroll account from the 2015 fee account during 2016. As a result, the sheriff has the following receivables and liabilities for the payroll account:

Cash In Bank at December 31, 2016		\$ 45,740
Receivables		22,908
Outstanding Checks		(5,824)
Liabilities		<u>(17,783)</u>
Balance per books as of December 31, 2016		45,041
Receivables Due:		
Due from 2015 fee account to cover January 2015 liabilities paid	\$ 5,971	
Due from 2016 fee account for January 2016 payroll expenses paid	<u>26,908</u>	
Total Receivables Due		32,879
Liabilities Owed:		
Prior Year:		
Payable to fiscal court for retirement withheld for 2015	(16,888)	
Payable to 2015 fee account for excess transfers	(26,908)	
Current Year		
Payable to fiscal court for retirement withheld for 2016	(16,335)	
Payable to 2016 fee account for excess transfers	(17,789)	
Total Liabilities Owed		<u>(77,920)</u>
Ending Cash Balance		<u>\$ 0</u>

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 collect and pay the liabilities detailed in the schedule shown above. We recommend the sheriff discontinue the use of an ongoing payroll account and pay all payroll from the fee account.

Sheriff's Response: This matter has been addressed and corrected. Office manager had been told conflicting information by two separate auditors. Payroll account will be abolished by 01/01/19.

Auditor's Reply: This finding includes the written recommendation of the auditor when considering all facts and circumstances of the situation. It is the responsibility of the sheriff's office to apply appropriate procedures.

The sheriff had \$1,416 in disallowed disbursements: The sheriff expended a total of \$1,416 as reimbursements to the bookkeeper for the following disallowed items:

- A total of \$877 was paid for 81 “Back the Blue” T-shirts, which is not necessary to the operation of the office.
- A total of \$350 was erroneously paid as reimbursement for a HP computer that was previously reimbursed.
- A total of \$77 was reimbursed for coffee supplies, which is not necessary to the operation of the office.
- A total of \$112 was expended for pictures taken for the sheriff’s annual calendar. This is not a necessary expense of the sheriff’s office.

Of this amount, the bookkeeper deposited personal funds of \$1,304 into the 2016 fee account for the T-shirts, a computer, and coffee supplies. The sheriff has not reimbursed the official bank account for pictures totaling \$112.

The sheriff has given purchasing authority to the bookkeeper. The lack of knowledge of acceptable fee office expenses allows for improper disbursements to be made. The expenses noted are not necessary to the operation of a sheriff’s office or beneficial to the public; they reduce the amount of operating funds for the sheriff’s office as well as reduce the amount of excess fees paid to the fiscal court.

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 only expend funds for allowable purposes and that invoices paid are dated for the calendar year in which they are paid. We also recommend the sheriff reimburse the 2016 fee account \$112 for disallowed pictures not refunded to the account.

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

The sheriff did not accurately remit payroll withholdings to the proper agencies: This is a repeat finding and was included in the prior year audit report as Finding 2015-009. The sheriff withheld payments from employee payroll checks for FICA, retirement, federal, state, and local withholdings as required. However, the sheriff did not remit employee retirement withholdings to the fiscal court and failed to remit FICA withholdings timely. As of the audit report date, the sheriff owes the Magoffin County Fiscal Court \$16,335 for retirement withholdings funds payable to the County Employees Retirement System (CERS). Retirement for the sheriff’s office employees is included with the fiscal court’s retirement. All retirement withheld and the amount to be matched by the sheriff’s office is submitted by the fiscal court to the retirement system. This process eliminates the chance of late penalties being enforced by the retirement system or adverse effects to employee’s years of service calculations; however, the sheriff is required to reimburse the fiscal court for the retirement expenses of his office.

The sheriff failed to implement strong internal controls over payroll. Failure to remit these payments can result in significant financial penalties to the sheriff as well as reduce the employees' years of service credit and financial contributions used to calculate retirement benefits when dealing directly with the retirement system. In addition, failure to remit payments timely can create an inflated cash balance which can result in a deficit if expended. The sheriff incurred penalties and interest charges from the Internal Revenue Service (IRS) for failure to pay withholding and matching amounts timely. The penalties and interest totaled \$1,578 for calendar year 2016. 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 78.625 requires employers to submit retirement withholding and matching funds in accordance with KRS 78.610 and 61.565. The fiscal court submits all payments to the retirement system with the understanding that the sheriff's office will remit amounts incurred for retirement withholdings and matching funds to the fiscal court. KRS 141.330 states employer 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 submit payments to clear the penalties and interest that have accrued as well as payment to the Magoffin County Fiscal Court in the amount of \$16,335 for retirement withheld in calendar year 2016. In the future, the sheriff's office should remit payments to withholding agencies timely.

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.

The sheriff did not have adequate controls over the payroll process: This is a repeat finding and was included in the prior year audit report as Finding 2015-008. We noted the following issues regarding payroll:

- The sheriff did not correctly compensate employees for hours worked in excess of 40 hours per week. An employee was noted as having inconsistent overtime rates.
- The sheriff did not maintain documentation for cumulative employee leave balances. However, a current cumulative amount, amount of change, and new balance was noted on the pay period where compensatory leave was used.
- The sheriff's office does not have a written policy regarding employee vacation and sick leave earned and used.

The sheriff and his bookkeeper were unaware of overtime rules in regard to overtime calculation and compensation. One employee lost income due to not being fully compensated for overtime worked.

KRS 337.285 requires employees to be compensated for hours worked in excess of 40 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 that overtime 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 payroll is no longer a part of our payroll.

The sheriff assigned court security officers paid by the Administrative Office of the Courts to work in his tax and fee office: This is a repeat finding and was included in the prior year audit report as Finding 2015-007. 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 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, which is a violation of statute.

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(1) 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 CSO's are allowed to provide security services for the court within the immediate area of the court house. The sheriff's office is within the immediate area of the court house. 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. 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 CSO's 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 CSO's. 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 these days there was no record of a separate payroll check being issued by the sheriff's office for the additional work performed at the sheriff's office. The audit is based on evidence available and undergoes supervisory reviews to ensure the findings are accurate.

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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