



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

FRANKFORT, Ky. – State Auditor Mike Harmon today released the audit of the 2018 financial statement of Owsley County Clerk Shanna Oliver. State law requires the auditor to conduct annual audits of county clerks and sheriffs.

Auditing standards require the auditor's letter to communicate whether the financial statement presents fairly the receipts, disbursements and excess fees of the Owsley County Clerk in accordance with accounting principles generally accepted in the United States of America. The clerk's financial statement did not follow this format. However, the clerk'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 clerk audits in Kentucky.

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

The audit contains the following comments:

The Owsley County Clerk did not comply with Department For Local Government requirements regarding approval and submission of annual budget, quarterly financial reports, and annual settlement: This is a repeat finding and was reported in the prior year audit report as Findings 2017-002 and 2017-003. The county clerk did not present a budget or an annual order setting maximum salary for deputies and assistants to the fiscal court for calendar year 2018. Also, she did not submit her annual settlement and excess fees to the fiscal court timely. Her fourth quarter financial report for 2018 was presented to and accepted by the fiscal court on October 14, 2019, however it was not accurate or properly completed since it did not include a reconciliation of the bank to the book balance. In addition, the county clerk did not submit her annual budget to the Department for Local Government (DLG) as required. However, the county

clerk did submit her 2018 fourth quarter financial report to DLG on October 18, 2019, which was not timely nor in compliance with the KRS requirements.

This is a repeat comment for not submitting her quarterly financial reports, annual settlement, and excess fees to the appropriate agency in a timely manner. The county clerk was under the impression that since all were late she could not submit them. She has been informed that she can still submit them for the year being audited and did so. She presented her annual settlement and fourth quarter financial report for 2018 to the fiscal court on October 14, 2019, and further submitted it to DLG on October 18, 2019. She also stated she has submitted her 2019 budget and annual order setting salaries as well as the 3rd quarter financial report to the fiscal court on October 29, 2019, and further submitted the documentation to DLG the same day.

The lack of compliance with KRS's and DLG reporting requirements has led to the fiscal court not being adequately informed of the financial activities of the county clerk's office, resulting in the limited ability to appropriately monitor said financial activity and make fully informed financial decisions for the county.

KRS 68.210 gives the state local finance officer the authority to prescribe a uniform system of accounts. Pursuant to KRS 68.210, the state local finance officer has prescribed minimum accounting and reporting standards in DLG's *County Budget Preparation and State Local Finance Officer Policy Manual*, which requires that 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.

Pursuant to KRS 64.530(3) states, in part, "...The fiscal court shall fix annually the reasonable maximum amount, including fringe benefits, which the officer may expend for deputies and assistants..."

In addition, the State Local Finance Officer also requires the quarterly report to be submitted to their office no later than 30 days following the close of the quarters ending March 31, June 30, September 30, and December 31.

KRS 64.152 states, in part, "(1) In counties containing a population of less than seventy-five thousand (75,000), the county clerk shall provide to the fiscal court by March 15 of each year a complete statement for the preceding calendar year[.] (2) At the time of filing the statement required by subsection (1) of this section, the county clerk shall pay to the fiscal court any income of his office, including income from investments, which exceeds the sum of his maximum salary as permitted by the Constitution and other reasonable expenses, including compensation of deputies and assistants..."

We recommend the county clerk submit a budget, annual order setting maximum salary for deputies and assistants to the fiscal court for each calendar year by January 15. We further recommend she submit her annual settlement and excess fees accurately and completely to the fiscal court no later than March 15.

In addition, we recommend the county clerk comply with the applicable KRS's and the DLG manual by submit her annual budget, quarterly financial reports and annual settlement to DLG as required.

County Clerk's Response: No response.

The Owsley County Clerk is not remitting fees in compliance with Kentucky Revised Statutes: This is a repeat finding and was included in the prior year audit report as Findings 2017-009 through 2017-013. During calendar year 2018 it was noted that the payments for the following items were not remitted in compliance with the corresponding Kentucky Revised Statutes (KRS).

- Motor vehicle receipts for calendar year 2018 were not paid to the state, county, and districts until January 2019.
- Delinquent tax receipts for January through October 2018 were not paid to the state until January 2019.
- Affordable housing receipts for calendar year 2018 were not paid to the state until October 2019.
- Legal process receipts for calendar year 2018 were not paid to the state until October 2019.
- Deed transfer tax receipts for calendar year 2018 were not paid to the county until October 2019.

The county clerk stated she did not have adequate controls and procedures in place to ensure disbursements were made timely; however for the later part of calendar year 2019 she stated she had made significant changes to her procedures to ensure compliance and disbursements are made timely.

The state, county, and districts did not have all the funds they budgeted for and may have not been able to provide services to tax payers due to lack of funding. In addition, the county clerk is not in compliance with KRS which would also allow for penalties and interest be assessed for late payments.

KRS 134.815(1) states, “[t]he county clerk shall, by the tenth of each month, report under oath and pay to the state, county, city, urban-county government, school, and special taxing districts all ad valorem taxes on motor vehicles collected by him for the preceding month, less the collection fee of the county clerk, which shall be deducted before payment to the depository. The county clerk shall be required to deposit state collections in a manner consistent with procedures established by the cabinet for the prompt payment to the state of other moneys collected by the county clerk.”

KRS 134.126(3) states, “[t]he county clerk shall report by the tenth day of each month to the department, the county treasurer, the sheriff, and the proper officials of the taxing districts. The governing body of a county may require the county clerk to report and pay on a more frequent basis if necessary for bonding requirements; however, the county clerk shall not be required to report and pay more frequently than weekly. (4) The county clerk shall allocate payments among the various entities entitled to a portion of the payment. The county clerk shall, at the time he or she makes the reports required by subsection (3) of this section: (a) Pay to the department for deposit in the State Treasury all moneys received due the state; (b) Pay to the county treasurer all

moneys received due the county; (c) Pay to the authorized officers of the taxing districts the amount due each taxing district; and (d) Pay the amount of fees, costs, commissions, and penalties to the persons, agencies, or parties entitled thereto.”

KRS 64.012(1)(b) outlines the fees charged by county clerks and states, “[t]he twelve dollar (\$12) fee imposed by paragraph (a) of this subsection shall be divided as follows: 1. Six dollars (\$6) shall be retained by the county clerk; and 2. Six dollars (\$6) shall be paid to the affordable housing trust fund established in KRS 198A.710 and shall be remitted by the county clerk within ten (10) days following the end of the quarter in which the fee was received. Each remittance to the affordable housing trust fund shall be accompanied by a summary report on a form prescribed by the Kentucky Housing Corporation.”

KRS 142.010 outlines taxes imposed on legal processes and instruments and the applicable fees. Subsection 3 of the statute states, “[t]axes imposed under this section shall be reported and paid to the Department of Revenue by each county clerk within ten (10) days following the end of the calendar month in which instruments subject to tax are filed or marriage licenses issued. Each remittance shall be accompanied by a summary report on a form prescribed by the department. (4) Any county clerk who violates any of the provisions of this section shall be subject to the uniform civil penalties imposed pursuant to KRS 131.180. In every case, any tax not paid on or before the due date shall bear interest at the tax interest rate as defined in KRS 131.010(6) from the date due until the date of payment.”

KRS 142.050(4) states, “[t]he county clerk shall collect the amount due and certify the date of payment and the amount of collection on the deed. The county clerk shall retain five percent (5%) as his fee for collection and remit the balance every three (3) months to the county treasurer, who shall deposit the money in the county general fund.”

We recommend the county clerk pay over receipt timely to ensure compliance with all KRS, and to prevent penalties and interest payments due for late payments.

County Clerk’s Response: No response.

The county clerk did not deposit funds timely: The county clerk did not process receipts timely nor did her office make daily deposits. Test of daily receipts for the week of November 11 through November 17 noted the following issues:

- November 13, 2018 was not deposited until December 27.
- November 14, 2018 deposit included eight checks. Two of the checks did not include the current date but were dated November 5 and October 8. In addition, the funds for the daily business were not deposited until December 27, 2018.
- November 15 2018 deposit included six checks. Two checks did not include the current date but were dated November 5 and October 12. In addition, the funds for the daily business were not deposited until December 27, 2018.
- November 16, 2018 deposit included 11 checks. Eight checks did not include the current date but had dates ranging from October 16 through November 2. In addition, the funds for the daily business were not deposited until December 27, 2018.

- November 17, 2018 was not deposited until December 27.
- Two checks issued from the state dated in June 2018 and November 2018, were not deposited until October 31, 2019

In addition, the certification of delinquency of tax sales registration was dated August 30, 2018, and the tax sale was held on September 13, 2018, however these funds were not processed or deposited timely as is required by 103 KAR 5:180. The county clerk said she did not have adequate controls and procedures in place to ensure deposits were made daily and all mail was being processed timely. She further stated she has implemented a new process to ensure items are being processed in a timely manner and the deposits are being made daily. Inadequate controls over deposits increase the risk that undetected fraud, errors, and misstatements will occur. Delaying deposits also increases the risk that funds will be lost, stolen, or otherwise misappropriated.

The Department for Local Government (DLG) has issued standards regarding “Handling Public Funds Minimum Requirements Pursuant To KRS 68.210 For All Local Government Officials (And Employees)”. One of the requirements is “Daily deposits intact into a federally insured banking institution. (KRS 68.210)”. Additionally, strong internal controls require all payments be deposited timely and on the date received.

Additionally, 103 KAR 5:180 requires purchasers to pay a registration fee of \$5 for each priority tax bill and \$10 for each current tax bill included on their list of tax bills they wish to purchase with the total registration fee not to exceed \$250. The deposits paid by the third party purchasers should be deposited to an official bank account when received. The deposits should be applied to the payment of the tax bills the purchaser purchases at the tax sale and any balances refunded to the third party purchasers. The registration fee paid should also be deposited to an official bank account when received.

We recommend the county clerk comply with KRS 68.210 and 103 KAR 5:180 regarding deposits and proper procedures for handling delinquent tax sales. We further recommend the county clerk ensure all payments are deposited timely by establishing effective internal controls over receipts and deposits.

County Clerk's Response: No response.

The county clerk did not prepare bank reconciliations and has numerous transactions at year end that have not cleared the bank: This is a repeat finding and was reported in the prior year audit report as Finding 2017-007. The county clerk did not prepare bank reconciliations for the fee account. As of December 31, 2018, there were 66 transactions totaling \$66,670 still outstanding, some of which had been outstanding for more than a year prior to them being sent out to the payee. Checks totaling \$36,151 cleared the bank in January through February 2019, check totaling \$13,157 cleared the bank in October 2019, and the remaining balance of \$17,781 will be included outstanding liabilities in the county clerk's settlement. It appears the county clerk is writing checks but not mailing or providing to taxing districts in a timely manner.

The county clerk stated she did not have adequate controls and procedures in place to ensure timely bank reconciliations were done and that all checks were issued and sent out timely. She further

stated she has implemented new process to ensure reconciliations are being done timely and checks are being issued and sent out in a timely manner. The county clerk also stated her bank account is reconciled to the current month. The risk of undetected fraud, errors, or other misstatements increases significantly when financial records are not prepared and reconciled timely. The numerous amount of un-cleared transactions at year-end indicate the county clerk failed to properly remit checks to various taxing districts. Failing to provide payments to taxing districts in a timely manner causes these districts to face potential financial strain and hardship in providing services to citizens and taxpayers.

KRS 68.210 gives the state local finance officer the authority to prescribe a uniform system of accounts. Pursuant to KRS 68.210, the state local finance officer has prescribed minimum accounting and reporting standards in the Department for Local Government's (DLG) *County Budget Preparation and State Local Finance Officer Policy Manual*, one of which is that monthly bank reconciliations be prepared by officials handling public funds. In addition, a strong internal control system requires timely reconciliations for all bank accounts and follow up on any items outstanding or un-cleared for a significant time period.

We recommend the county clerk prepare timely monthly bank reconciliations. We also recommend the county clerk follow up on any transactions that are outstanding or un-cleared for a significant time period and take appropriate action to clear the transactions. Finally, we recommend the county clerk ensure all payments to taxing districts are made timely.

County Clerk's Response: No response.

The county clerk's office lacks adequate segregation of duties: This is a repeat audit finding and was reported in the prior year audit report as Finding 2017-004. The county clerk and her employees all collect cash and process transactions. In addition, the county clerk prepares the daily deposits, daily, weekly, and monthly reports, as well as writes and signs disbursement checks and although a receipt/disbursement ledger is prepared by another employee there is no documentation of a review nor does it appear to be completed in a timely manner.

This lack of segregation of duties is a result of a limited budget; which restricts the number of employees the county clerk can hire and delegate responsibilities to. Without adequate segregation of duties, there is an increased risk of misappropriation of assets, errors, and inaccurate financial reporting to external agencies, such as the Department for Local Government (DLG).

The segregation of duties over various accounting functions such as preparing deposits, preparing daily checkout sheets, and issuing cash receipts is essential for providing protection from asset misappropriation and inaccurate financial reporting. Good internal controls further dictate that duties of preparing deposits, preparing checks, signing checks, posting to ledgers, and reconciliations of ledgers to bank accounts be segregated. Additionally, proper segregation of duties protects employees in the normal course of performing their daily responsibilities.

We recommend the county clerk segregate duties over receipts, report preparation, bank reconciliations, and disbursements. If segregation of duties is not feasible due to lack of staff, the county clerk should implement compensating controls to help mitigate any weakness. These

compensating controls can and should be documented by initialing and dating the supporting documentation by the person who completed the comparison or review.

County Clerk's Response: No response.

The depository institution did not pledge or provide sufficient collateral to protect deposits and the county clerk did not have a written agreement to protect deposits: This is a repeat finding and was reported in the prior year audit report as Finding 2017-008. On February 28, 2018 and December 31, 2018, the county clerk's deposits of public funds were uninsured and unsecured in the amount of \$217,678 and \$177,918, respectively. In addition, there was no written agreement between the county clerk and the depository institution, signed by both parties, securing the county clerk's interest in the collateral. The clerk was unaware she needed a collateral security agreement to secure her accounts since they exceed the Federal Deposit Insurance Corporation (FDIC) coverage. The county clerk's bank balances do not usually exceed FDIC coverage, however, the failure to distribute payments to taxing districts timely from the fee accounts resulted in the cumulative balances exceeding FDIC coverage. Per the county clerk she has requested a pledge of securities from the bank which was approved by the banks board of directors on November 20, 2019. By not providing adequate collateral, deposits were at risk in the event of a bank failure.

According to KRS 66.480(1)(d) and KRS 41.240, financial institutions maintaining deposits of public funds are required to pledge securities or provide surety bonds as collateral to secure these deposits if the amounts on deposit exceed the \$250,000 amount of insurance coverage provided by the FDIC.

We recommend the county clerk enter into a written security agreement with the depository institution to ensure all taxpayer funds are adequately secured.

County Clerk's Response: No response.

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

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

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