EXAMINATION OF COMMONWEALTH OF KENTUCKY
ELECTION LEAVE USE

MIKE HARMON
AUDITOR OF PUBLIC ACCOUNTS
www.auditor.ky.gov

209 ST. CLAIR STREET
FRANKFORT, KY 40601-1817
TELEPHONE (502) 564-5841

MIKE HARMON
AUDITOR OF PUBLIC ACCOUNTS

December 5, 2017

Thomas B. Stephens, Secretary
Kentucky Personnel Cabinet
501 High Street
Frankfort, KY 40601

Allison Lundergan Grimes, Chair
Kentucky State Board of Elections
140 Walnut Street
Frankfort, Kentucky 40601

The Auditor of Public Accounts (APA) has completed its examination of election leave use by the Commonwealth of Kentucky's employees whose payroll data is processed through the Kentucky Human Resource Information System (KHRIS). For the period examined, this includes employees of the executive and legislative branches of state government. This letter summarizes the procedures performed and communicates the results of those procedures.

Examination procedures included the APA selecting and analyzing the 2015 general election and the 2016 primary election to determine the extent to which employees claiming election leave compensation actually voted. Time records were reviewed to ensure individuals receiving leave compensation to vote or to work the polls during an election followed the requirements related to these benefits.

The purpose of this examination was to ensure appropriate processes are in place to provide proper oversight of election leave use, and to ensure costs are only paid by the Commonwealth for this benefit when employees meet the appropriate eligibility requirements.

Summary findings and recommendations based on our examination are presented in this report to assist all parties involved in improving procedures and internal controls. Overall, these findings identify concerns regarding misuse of election leave by some employees and a need for clarification of certain policies, as well as additional concerns regarding the functionality and accuracy of information in the Voter Registration System. The details related to individual employee leave usage are preliminary because they are subject to further investigation of individual circumstances and final agency action with respect to each instance identified.

If you have any questions or wish to discuss this report further, contact me or Libby Carlin, Executive Director.

Sincerely,

Mike Harmon
Auditor of Public Accounts

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MIKE HARMON
AUDITOR OF PUBLIC ACCOUNTS

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Examination of Commonwealth of Kentucky Election Leave Use

Examination Objectives

The primary focus of our examination was to determine the amount of election leave improperly claimed by state employees. This examination covers the 2015 general election and the 2016 primary election, and the results are cumulative for those elections. During the course of the examination, issues concerning the Voter Registration System (VRS) were identified as well.

Background

The Auditor of Public Accounts (APA) conducted an examination of election leave use by the Commonwealth of Kentucky's employees whose payroll data is processed through KHRIS. All employees are entitled to at least four hours of voting leave per election pursuant to Section 148 of the Kentucky Constitution, and may be subject to disciplinary action for claiming voting leave and not voting under KRS 118.035. Executive branch employees are entitled to paid leave for this purpose pursuant to 101 KAR 2:102 Section 7 and 101 KAR 3:015 Section 7. Executive branch employees are also entitled to election officer leave if they serve as poll workers in an election. The APA performed voting leave reviews in 2005 and 2007. The original review, performed in 2005, identified a significant concern about the number of executive branch employees claiming voting leave but not actually voting in the related election. The second review, performed in 2007, found a substantial decrease in the number of individuals appearing to have claimed voting leave inappropriately. The APA determined an updated analysis would be prudent, especially given a higher risk environment due to a number of elections in recent years with low voter turnout.

Findings and Recommendations

Finding 1: 1,329 Employees Claimed Election Leave To Which They Were Not Entitled At A Total Cost To The Commonwealth Of Over $100,000

Records indicate some employees improperly claimed voting leave benefits when they did not vote, were not registered to vote, or were already on another form of leave at the time of the election. Other employees claimed voting leave on non-election days, claimed more leave time than permitted, or claimed voting leave more than once per election. These improper voting leave claims were processed and approved, potentially costing the Commonwealth $102,807.50 in leave wages, not including other benefit costs. The individual instances summarized in this report are preliminary recommendations pending follow-up, investigation, and final agency action related to each particular instance.

Recommendations: The Kentucky Personnel Cabinet (Personnel) should communicate to agencies to implement controls to ensure compliance with requirements to claim voting leave. Personnel should also direct agencies to investigate and adjust leave balances where improper leave claims were made by employees. This finding will be referred to the Executive Branch Ethics Commission.

Finding 2: The Voter Registration System Has Inaccuracies And A Lack Of Functionality

Of the sample of employees tested, 453 unique individuals verified as voting in one or both elections did not receive voting history credit in VRS. According to the Kentucky State Board of

Elections (KSBE) management, VRS reporting functionality will not allow creation of historical perspective reports, which impedes verification of election results and turnout reporting. Voting history records that are purged are deleted entirely and cannot be recovered in the event of erroneous purges of voter histories.

Recommendations: KSBE management should determine the cause of errors in voter histories in VRS. KSBE should evaluate and expand the functionality of VRS to provide historical reports and use such reports to validate voter counts by county and precinct to the turnout results.

Finding 3: Discrepancies Reveal Voter Validation Weaknesses

Two voters with social security numbers already in use in VRS were registered under separate voter identification numbers rather than resolving the prior use of their unique social security number. Other differences in social security numbers warrant investigation and follow-up. For those voters providing a social security number, these discrepancies suggest that validation of the number provided would be prudent. Some voters had multiple or duplicate registrations in the same or different counties.

Recommendations: Validation of social security numbers provided at registration should be implemented. Where available, unique identifiers should be used and inconsistencies should not be ignored or bypassed by use of a voter identification number when a social security number or driver's license has been issued.

Finding 4: The Appropriate Use Of Election Leave Needs Further Clarification

Twenty-eight employees claimed election officer leave on non-election days at a cost of $3,232.70. There is conflicting guidance whether claiming this type of leave on non-election days (such as for poll worker training) is a proper use of this type of leave. The regulation governing this type of leave does not directly address the issue. The Kentucky Personnel Cabinet believed election officer leave could not be claimed for training purposes, while the state's timekeeping system suggested use of this leave for training was appropriate. Therefore, these leave statistics have not been included in the tabulation of improperly claimed leave. Leave claims for the 2016 general election and use of combined voting leave and election officer leave are additional issues that should be addressed with state agencies.

Recommendations: Regulations, Kentucky Personnel Cabinet guidance, and timekeeping systems should be uniform and unambiguous regarding when it is appropriate for election leave to be claimed.

Finding 5: Election Records Were Not Maintained By Some County Clerks

County Clerks in Boone, Breathitt, Elliott, Green, and Metcalfe counties did not maintain a portion or all of the records for one or both elections. The County Clerk Records Retention Schedule requires election records to be retained for a minimum of 22 months after the date of the election.

Recommendations: KSBE should provide reminders to county clerks about their responsibilities concerning the retention of election processing records.

Conclusion

These findings reflect continued misuse of election leave by employees and additional concerns regarding the functionality and accuracy of information in VRS. The APA will provide Personnel with the details of the preliminary improper leave claims identified as part of this report. Personnel should communicate to all agencies utilizing KHRIS the regulations and requirements for voting leave. Also Personnel should direct agencies to further investigate whether employees improperly claimed voting leave on a case-by-case basis. KSBE should review the functionality of VRS and address other discrepancies in the voting system. Policies and procedures for voting and election officer leave should be consistent. Record retention policies should be followed to maintain the integrity of voting records.

Background

Objectives of the Examination

The Auditor of Public Accounts (APA) conducted an examination of election leave use by the Commonwealth of Kentucky's employees whose payroll is recorded and processed through KHRIS. The APA performed election leave reviews in 2005 and 2007. The original review, performed in 2005, identified a significant concern about the number of state employees claiming voting leave but not actually voting in the related election. The second review, performed in 2007, found a substantial decrease in the number of individuals appearing to have claimed voting leave inappropriately. The APA determined an updated analysis would be prudent, especially given a higher risk environment due to a number of elections in recent years with low voter turnout.

Scope and Methodology

The APA selected two elections held during fiscal year 2016 for analysis, the 2015 general election and the 2016 primary election, to determine the extent to which employees claiming voting leave compensation actually voted. In addition to voting leave, executive branch employees may claim up to a full day of election officer leave if they serve as a poll worker on the day of an election. The 2016 general election held on November 8, 2016, was not included in this analysis because a presidential election is a state holiday pursuant to KRS 2.190, during which employees are not allowed to claim voting leave.

Under the authority of Section 148 of the Kentucky Constitution, the General Assembly is to enact laws that provide employees "at least four hours on election days, in which to cast their votes." Enactment of this provision is found at KRS 118.035, which allows four hours of voting leave for all employees. Subsection (3) states that "[a]ny qualified voter who exercises his right to voting leave under this section but fails to cast his vote, under circumstances which did not prohibit him from voting, may be subject to disciplinary action." Under these laws, the leave time is not required to be paid leave. *Illinois Cent. R. Co. v. Com.*, 204 S.W.2d 793 (Ky. 1947). However, the Commonwealth provides state employees paid leave related to voting in local, state and federal elections and working the polls in support of these elections. 101 KAR 2:102 Section 7(1) and 101 KAR 3:015 Section 7(1) each identically state "[a]n employee who is eligible and registered to vote shall be allowed, upon prior request and approval, four (4) hours, for the purpose of voting."

In conducting this examination, time records were reviewed to ensure individuals receiving leave compensation to vote or to work the polls during an election followed the requirements related to these benefits. As part of this examination, the APA used information from the Kentucky Personnel Cabinet (Personnel) time data and personnel

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records, and, where available, voting history information from the Kentucky State Board of Elections (KSBE) and election processing records maintained by individual county clerks. Findings related to this examination and recommendations to Personnel for addressing these findings are included in this report.

Based on the time data files available within the Kentucky Human Resource Information System (KHRIS), 24,786 state employees claimed voting leave within the time period open for voting related to the 2015 general election. For the 2016 primary election, 22,477 state employees claimed voting leave. In addition, between July 1, 2015 and June 30, 2016, there were 492 state employees who reported leave time related to working the polls during the elections. These populations were used to complete all testing for the examination.

The voting history information gathered and maintained by KSBE was also necessary to perform this examination. It is the responsibility of KSBE to update and maintain a central voter history file after each election by scanning certain information from each election precinct roster. Every precinct roster contains a space for each voter's signature or, in the case of absentee voters, a stamp affixed by the clerk. However, simply matching the data between the KHRIS voting leave records and the KSBE voter history records would not provide accurate results, so additional procedures were performed to confirm discrepancies. These procedures were necessary for a variety of reasons. For one, the scanning process performed by KSBE does not properly record every individual who actually voted. Also, voting history may not be matched conclusively between the data maintained by KSBE and Personnel in instances where an employee's social security number was not available in the voter registration information.

The additional procedures performed to examine discrepancies in the data match between KHRIS and KSBE voter history records included manually reviewing available election processing records maintained at the individual county clerk offices. Based on the Commonwealth of Kentucky's retention schedule, all election processing records must be retained for 22 months after the election date. Therefore, all records for the 2015 general and 2016 primary elections should have been available for review. The findings in this report result from data analysis and review by the APA, which relies on the accuracy and integrity of the data and documentation maintained by Personnel, KSBE, and county clerks.

As noted above, there were 24,786 employees claiming voting leave for the 2015 general election and 22,477 employees claiming voting

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leave for the 2016 primary election. Matching these individuals to the available voter history information from KSBE identified 909 employees for the 2015 general election (3.67 percent) and 1,126 employees for the 2016 primary election (5.01 percent) who did not appear to have voted. Accounting for duplicate individuals who appeared in both populations resulted in 1,817 unique employees identified as having a discrepancy between KHRIS and voter history records in one or both elections tested. The individual voting records for these employees were then tested further in an attempt to confirm if the discrepancies were related to employees claiming leave to which they were not entitled or due to data errors.

As noted, the APA reviewed the available election processing records at county clerk offices across the Commonwealth to determine if documentation was available to verify whether individuals had voted. The review procedures included inspection of county clerk records such as individual precinct rosters, supplemental precinct rosters, absentee voting logs, and sheriff's post-election reports. If the individual had not been identified within the KSBE voting history data, county clerk staff would also attempt to find the individual's record within the Voter Registration System (VRS). Based on these procedures, the following findings were identified.

These findings are being referred for investigation of individual claims and final agency action with respect to each employee. Therefore, the details related to individual employee leave claims are preliminary pending those investigations and actions by agencies and the Executive Branch Ethics Commission.

Findings and Recommendations

Finding 1: 1,329 Employees Claimed Election Leave To Which They Were Not Entitled At A Total Cost To The Commonwealth Of Over $100,000

There were 1,496 instances identified in which an employee claimed voting leave when records do not support that the employee actually voted. Because some employees were identified with discrepancies in both the 2015 general election and 2016 primary election, there were 1,329 unique individuals who claimed voting leave to which they were not entitled. Based on payroll records, these improper voting leave claims cost the Commonwealth over $102,807.50. This figure represents wages only for each individual, and does not include the additional cost to the Commonwealth of associated benefits. See Table 1 - Cost Analysis Associated With Improper Leave Claims.

1,176 Employees Claimed Voting Leave in One or Both Elections But Did Not Vote

The largest type of discrepancy identified related to employees who were registered to vote and listed on a voting precinct roster, but for whom there was no evidence indicating they had actually voted. For the 2015 general election, records indicate 585 employees who claimed voting leave did not vote. For the 2016 primary election, records indicate 755 employees who claimed voting leave did not vote. These discrepancies identify 1,176 unique employees who claimed voting leave but did not vote in one or both elections.

An employee was identified as not having voted if the auditor was able to locate their name on the precinct roster, but was not able to find their signature on the roster, the supplemental precinct roster, or the absentee voting log. The sheriff's post-election report was also reviewed as additional evidence that the individual did not mistakenly sign on an incorrect line or vote in some other way.

Employees Improperly Claimed Voting Leave While On An Extended Absence

Auditors reviewed KHRIS time data to identify those instances where employees claimed voting leave for the 2015 general election and the 2016 primary election but appeared to be on extended leave at the time. A total of 98 instances totaling 396 leave hours were identified where individuals appeared to be on extended leave at the time voting leave was claimed.

Personnel regulations make an executive branch employee eligible to claim voting leave when they are scheduled to work on the day they vote, are registered to vote, request leave in advance, and actually cast a vote. If an employee is claiming sick leave, sick leave sharing, Family Medical Leave Act (FMLA), or leave without pay for an extended period including the date of the election, they are not scheduled to work on election day and are, therefore, not entitled to voting leave. The 98 instances identified were all executive branch employees.

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Employees Not Registered To Vote

A total of 53 instances involving 42 unique employees were identified in which an employee who claimed voting leave was not reported as a registered voter in VRS at the time of the election. These instances include employees whose registration was not valid until after the election being reviewed or whose registration had been purged due to inactivity or notice of a felony conviction prior to the election. For the 2015 general election, 34 employees were identified as not being registered, and 19 employees were not registered for the 2016 primary election.

Voting Leave Claimed More Than One Day Per Election

Of the original population of individuals claiming voting leave, three individuals in the 2015 general election and six individuals in the 2016 primary election claimed voting leave on two separate days. Although records indicated the individuals voted and did not exceed four hours of voting leave on any single day, this practice appears to be in violation of executive branch employee voting leave requirements. According to 101 KAR 2:102, Section 7, and 101 KAR 3:015, Section 7, which apply to most executive branch employees, "[a]n employee who is eligible and registered to vote shall be allowed, upon prior request and approval, four (4) hours, for the purpose of voting." Employees are allowed to claim voting leave only once for each eligible election. The leave must be taken on the day the individual's vote is cast, and it must be on a day when the individual is scheduled to work. Therefore, any voting leave claimed on more than one day for the same election is in violation of the regulations. Furthermore, in all but one instance, these employees also exceeded the total number of authorized leave hours that may be claimed for a single election.

Based on the information available on Personnel's website concerning elections for the time period under review and based on address information for the individuals within KHRIS, there were no special elections beyond the general or primary elections for which the individual would have been eligible during the relevant time period. As such, there does not appear to be a valid reason for these individuals to claim voting leave on two separate days.

Employees Did Not Vote and Claimed More Leave Time Than Allowed

Based on records examined, two additional employees did not appear to vote and claimed even more than the allowable four hours of election leave.

One individual identified as not having voted claimed four hours of voting leave on two consecutive days for a total of eight hours. There were no special elections during the period. Therefore, it appears this individual claimed leave twice for the 2015 general election.

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One individual whose voting record could not be located claimed one hour of voting leave on November 2, 2015 and four hours of voting leave on November 3, 2015. There were no special elections during the period. Therefore, it appears this individual claimed leave twice for the 2015 general election.

Employees Claimed Leave On A Day Other Than When Voting Occurred

According to 101 KAR 2:102, Section 7, and 101 KAR 3:015, Section 7, "(1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, four (4) hours, for the purpose of voting. (2) An employee casting an absentee ballot shall record the leave on the day the employee's vote is cast. An employee shall be regularly scheduled to work on the day the vote is cast in order to receive the leave." Therefore, voting leave may only be claimed on the day the individual was normally scheduled to work and cast their ballot with the county clerk.

Two instances were identified for the 2015 general election in which the executive branch employee claimed voting leave on a day other than the day on which the employee voted. In one instance, the individual voted absentee but claimed the voting leave on the actual election date of November 3, 2015. In the other instance, the individual voted on the actual election date, but claimed the voting leave on another date. Even though these individuals voted, these were not allowable claims for leave because the dates they claimed voting leave were not the days on which their ballots were cast.

Costs Associated With Improper Voting Leave

In order to determine the potential impact of the improper voting leave claims, Table 1 was developed based on payroll information within KHRIS. This analysis determines costs associated with individuals who did not vote, were not eligible to vote during the election, claimed more than the allowable leave time, or claimed voting leave on a day other than when voting occurred or when the individual was on extended leave. This cost analysis only represents wages or salary and does not include benefits, meaning the full cost to the Commonwealth of the improper leave claims exceeds the amount noted. Table 1 reflects the number of unique employees in each category, while the hours and costs represent all instances of improper voting leave claims that were identified through voting records.

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Table 1 - Cost Analysis Associated With Preliminary Improper Leave Claims

General 2015	Number of Employees	Hours	Cost
Employee did not vote, no other discrepancy found	585	2,228.25	$ 39,941.56
Voting leave claimed while on an extended absence	55	220.00	4,674.67
Employee did not vote, not registered to vote	34	133.00	2,219.22
Employee claimed voting leave more than once per election	3	22.00	436.17
Employee did not vote, claimed more leave time than allowed	2	13.00	368.01
Employee claimed leave on a day other than when voting occurred	2	8.00	308.55
Total	**681**	**2,624.25**	**$ 47,948.18**
Primary 2016			
Employee did not vote, no other discrepancy found	755	2,938.25	$ 49,524.30
Voting leave claimed while on an extended absence	44	176.00	3,177.38
Employee did not vote, not registered to vote	19	76.00	1,098.86
Employee claimed voting leave more than once per election	6	41.00	1,058.78
Total	**824**	**3,231.25**	**$ 54,859.32**
Combined*			
Employee did not vote, no other discrepancy found	1,176	5,166.50	$ 89,465.86
Voting leave claimed while on an extended absence	98	396.00	7,852.05
Employee did not vote, not registered to vote	42	209.00	3,318.08
Employee claimed voting leave more than once per election	9	63.00	1,494.95
Employee did not vote, claimed more hours than allowed	2	13.00	368.01
Employee claimed leave on a day other than when voting occurred	2	8.00	308.55
Total	**1,329**	**5,855.50**	**$102,807.50**

*Instances adjusted to reflect the number of unique employees impacted.

Recommendations

To facilitate the following recommendations, the APA will provide Personnel, as the KHRIS administrator, with the details of the preliminary improper leave claims identified in this report. The individual instances summarized in this report are to be considered preliminary pending follow-up and investigation of each particular instance by the agencies.

- Personnel should communicate to all agencies utilizing KHRIS the regulations and requirements for voting leave. Agencies should implement supervisory controls to ensure employee compliance with leave requirements in an effort to reduce inappropriate leave claims against the Commonwealth.
- Personnel should direct agencies to further investigate whether employees improperly claimed voting leave. Further

investigation of particular instances is necessary due to potential anomalies that could occur in the voter history records, and with files maintained at the county clerk offices, such as discrepancies in social security numbers or legal names.

- Personnel should direct agencies to adjust leave balances for those employees verified to have improperly claimed voting leave.
- Personnel should direct agencies to take appropriate personnel actions with respect to employees that are determined to have improperly taken leave.
- This finding will be referred to the Executive Branch Ethics Commission for further investigation. We recommend that agencies share further information obtained from investigation of individual leave claims with the Executive Branch Ethics Commission to avoid duplication of efforts.

Finding 2: The Voter Registration System Has Inaccuracies And A Lack Of Functionality

The examination identified numerous instances in which the voting registration and history records within VRS were not accurate or produced inaccurate reporting. These exceptions are explained in more detail below.

VRS Reflects No Voting History Credit for 453 Employees Who Actually Voted

VRS did not reflect voting history credit for 165 employees who voted in the 2015 general election and 291 employees who voted in the 2016 primary election. These discrepancies identify 453 unique employees who voted in one or both elections but did not receive voting history credit in VRS. Auditors confirmed votes cast by reviewing voter signatures on precinct rosters, supplemental precinct rosters, absentee voting logs, or the sheriff's post-election report.

There are two main issues with not properly recording an individual's voting history. First, this increases the risk of improper purging of a registration due to inactivity. Second, this is one of the causes of the inability to match voting history records to the election results published by the KSBE. If the system is not consistently capturing all voting for each election, it is not possible to completely reconcile the election results to the voter history, even if historical perspective reports are available.

Inability To Run Historical Perspective Reports

The voting history information file provided from VRS reflected the data in the system as of the date the file was created. According to KSBE management, VRS reporting functionality will not allow historical perspective reports to be created. In other words, VRS does not have ability to generate a detailed report for a particular election indicating the actual individuals registered within each county and precinct and whether these individuals cast a ballot. Lack of this reporting function can interfere with validating the completeness and accuracy of voter history records. Without historical reports for

elections, there is no way to compare the number of votes cast with the number of registered voters at the time of the election or the actual voter history counts. This comparison may be useful to identify potential voter fraud or to confirm voter turnout. In addition, because of the 22-month retention period for local voting records, VRS records are the only long-term voter histories available. Failure to report historical point-in-time information about the registration in VRS, along with inaccuracies in scanning of registers for each election, compounds the problem of VRS inaccuracies.

In addition, the process for updating and reviewing voting history information after each primary and general election is not being completed while registration is closed. The VRS application does not allow adding to or editing of registration information for the period beginning on the close of the fourth Tuesday preceding a primary or general election, through the first Monday following the election. For special elections, registration is closed for 28 days prior to, and for seven days after, the election. Due to the short timeframe after the election date, registration will reopen prior to the completion of scanning voting records to update the voting history records in VRS.

KSBE is aware of this situation. When reviewing Voter Turnout reports published on KSBE's website, the following disclaimer statement is provided:

> ***Disclaimer:*** *The turnout report cannot accurately be compared to the election results page due to the fact the turnout report is run after the Kentucky Voter Registration rolls reopen. The discrepancy in the numbers are the results of voters who have moved out of state, moved to another county, or are purged for being a convicted felon, incompetent, and deceased. Also, the State Board of Elections scans the precinct signature rosters which is not 100% accurate. The discrepancy in the numbers reflect these changes within the county voter registration.*

As explained within this Disclaimer, once registration is reopened, changes and additions to VRS are allowed. Because the current VRS cannot accommodate historical reporting and it is known that the scanning process "is not 100% accurate," it is not possible to determine whether the voting history records are totally complete and accurate. It is also not possible to historically validate election results or turnout numbers using VRS voting history information. Furthermore, when voters are purged from VRS, their voting history record is deleted completely. This means there is no way to

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investigate the purged voter's voting history record. If a voter is improperly purged due to a discrepancy in scanning or other error, there is no way to retrieve their deleted information to reconstruct their voter history in VRS.

Some Employees Could Not Be Found On Voting Records

In a total of 112 instances involving 107 separate employees, an employee claimed voting leave, but no documentation was found confirming the employee's voting history or existence in VRS. For the 2015 general election, 74 employees were not found in VRS or on the voting registers, while 38 employees were not found for the 2016 primary election. If these individuals did not vote, the cost to the Commonwealth of the unearned wages would total $8,055.03. However, because VRS does not report historical data at the time of the election, these possible instances of improper leave could not be feasibly confirmed.

It should be noted that due to the voter history information provided by KSBE being reported as of a point in time other than the election dates being examined, there was a known possibility that individuals may have moved to a different precinct or county. As part of the process to validate the discrepancies identified above, the employees' county location was also gathered from KHRIS personnel records in order to determine where the individual lived at the time of the elections. Where applicable, auditors reviewed records in any county in which individuals may have reasonably been registered for the election.

Information In VRS Is Limited After Individual's Registration Is Purged

Due to the way VRS maintains data, individuals who had been purged from the voter rolls at the time of testing were not included in the information provided to the APA. KRS 116.0452(3) lists reasons an individual may be removed from the voter registration books. Specifically, a registered voter may be removed upon request of the voter; upon notice of death, declaration of incompetency, or conviction of a felony; or upon failure to respond to a confirmation mailing and failure to vote or appear to vote for a certain period of time. Although it is possible to view some fields of data in VRS related to a purged registration, the information available is very limited and does not contain the voting history.

A total of 80 individuals were not initially matched by their social security number to the VRS voting history records with a valid registration applicable to the elections being reviewed. Subsequent testing of these records found that six registrations had been purged from VRS at the time of our review. Two registrations were removed due to inactivity, and the remaining four registrations were removed after notification of the individual's felony conviction.

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Recommendations

The Commonwealth has charged KSBE with the administration of state election laws and supervision of registration and purging of voters within the state. Therefore, it is KBSE's responsibility to maintain a complete roster of all qualified registered voters in the state by county and precinct. Along with these responsibilities, KSBE must also maintain a five-year voting history for each voter. KSBE has chosen VRS for registering voters in the Commonwealth.

We recommend the following to strengthen the controls over VRS registration and voting history maintenance. To facilitate these recommendations, this office will provide KSBE with details of the comments in this report.

- KSBE should work with VRS programmers to expand reporting functionality to allow creation of historical perspective reports for individual elections. These reports should reflect the full complement of actions occurring for a particular election cycle including voting counts down to the county and precinct level.
- Once developed, KSBE should use these historical reports to validate the voter counts for each county and precinct to the turnout results. This review should be completed prior to the precinct register books, supplemental logs, and absentee logs being returned to the county clerks. Discrepancies with the number of voters receiving credit should be investigated and corrections should be made in VRS to grant voting credit to all appropriate individuals to the extent practicable.
- KSBE should work with the VRS programmers to expand the amount of voting history information being retained for purged registration records. This information should be made available on inquiry screens in the system and for reporting purposes.

Finding 3: Discrepancies Reveal Voter Validation Weaknesses

In the examination of state employees claiming election leave, several discrepancies revealed potential weaknesses that could affect the larger voting population.

Social Security Numbers In KHRIS Did Not Match VRS Information

Four instances were identified in which the individual's social security number in the KHRIS record did not match the social security number in the VRS registration record. Specifically, two individuals had been given voter identification numbers because their social security number was found to be in use by another individual in VRS. Voter identification numbers are permitted in lieu of social security numbers for voter registration in some instances. However, where a

unique identifier, such as a social security number, is provided and found to already be in use, further investigation is warranted to ensure that individuals have only one registration record in the system and that existing registrations are not based on false identifying information. Furthermore, 52 U.S.C. 21083(a)(5)(A), the Help America Vote Act (HAVA), requires a driver's license or social security number for voter registration, except where neither has been issued to the voter. Where one of these numbers has been issued, use of a voter identification number instead would not be consistent with HAVA verification requirements.

The social security numbers identified in KHRIS for the other two individuals closely resemble those recorded in VRS. However, auditors were unable to determine if the error was due to intentional misuse of the social security numbers or due to data entry errors transposing numbers.

Social Security Numbers Are Not Being Validated Or Consistently Used For Registration

Additionally, there were a total of 80 individuals who were not initially matched by their social security number to the active VRS voting history records for the elections being reviewed. Although the majority of these individuals were not currently registered voters and would, therefore, have no match in VRS, 28 of these individuals were identified as being registered with a voter identification number instead of a social security number. Of these, 26 individuals voted, and auditors were able to determine that the individual received credit in VRS in most of these cases. The remaining two individuals did not appear to vote, and are included in Finding 1 as improper leave claims.

A social security number is not required to be provided in order to be registered to vote pursuant to KRS 116.155. If an individual is unable to provide a social security number, they will be given a unique voter identification number. Even where social security numbers are provided by registrants, there is no vetting of the social security numbers by either county clerk staff or KSBE in order to ensure accuracy of the information.

A Single Individual Appeared On The Same Register Twice For The Same Election

One of the individuals noted as voting, but not receiving credit, was also identified on two separate lines on the same county precinct register book for the 2015 general election. The name and birth date of the individual matched exactly. The only dissimilarity was in the street address. The actual number and street name were identical--the difference was one record showed 'St' and the other 'Street.' This individual signed only one of the available lines. However, because the name was listed on the register more than once, the potential existed for multiple votes to be cast.

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Two Individuals Appeared On Registers Of Two Counties For The Same Election

Two individuals were identified on two separate county precinct register books for the same election. The first individual was listed on the 2015 general election precinct register books for both Harlan County and Fayette County. The second individual was listed on the 2016 primary election precinct register books for both Morgan County and Fayette County. There was no indication these individuals voted in either county. But, because they were listed on the register in both counties, the potential existed for multiple votes to be cast.

Recommendations

We recommend the following:

- For the individuals identified with social security numbers in VRS different from, but closely resembling, those in KHRIS, it would be prudent for Personnel to validate the social security number contained in KHRIS. If changes are identified and supported, corrections should be made in the KHRIS personnel record. Once a final determination of the valid social security number is made, this information should be provided to KSBE for updates, as necessary, within the VRS registration record.
- KSBE should begin to validate the social security numbers of voters. This validation should occur at the point registration is requested. Also, once implemented, a periodic review of existing registrations should be performed in order to determine those registration records where a questionable or inaccurate social security number exists.
- KSBE should perform an analysis on VRS registration records to determine whether instances potentially exist where an individual was granted two unique registrations using different identification numbers, i.e. one record for his/her social security number and another using a voter identification number. Any potential duplications should be reviewed, verified, and where necessary, voting registration records should be updated or purged. Should potential voter fraud be identified during this review, the affected records should be reported to the Kentucky Office of Attorney General.

Finding 4: The Appropriate Use Of Election Leave Needs Further Clarification

Election Officer Leave Used On Non-Election Days

The KHRIS time data was reviewed to identify instances where the leave code for working polls during an election was claimed on a date where no primary, general, or special election was scheduled. The existence of primary, general, or special elections were identified through an assessment of issued Personnel Memorandums from the Personnel Cabinet's website. This review revealed 40 instances related to 28 individuals in which employees coded time for election officer leave on days when no election occurred. These instances

resulted in 144.25 hours of possible improper leave time totaling $3,232.70.

Personnel management stated employees are entitled to receive paid election officer leave each time they work the election at a precinct on a day they were normally scheduled to work. Personnel's Division of Employee Management stated that this code may not be used for any other purpose, including election officer training. However, the Attendance and Absence Codes documented within the Timesheet Template available to Human Resource Administrators on Personnel's website states that the code for working polls during election leave "can also be used for training associated with working the polls."

Election officer or poll worker leave for most executive branch employees is governed by 101 KAR 2:102 Section 7(3) and 101 KAR 3:015 Section 7(3): "[a]n election officer shall receive additional leave if the total leave for election day does not exceed a regular workday." The mention of election day implies that this type of leave might be restricted to working polls during the actual election, consistent with Personnel management's interpretation. However, the restriction on additional leave merely states that it may not exceed a regular workday on election day, without directly addressing the extent of election officer leave, if any, available on other days. The regulation is silent about the availability of election officer leave on non-election days. This ambiguity is evident in the varying guidance identified.

Leave Claimed For General 2016 Election

As noted, the 2016 general election was not within the scope of the APA's examination because it was an official state holiday for employees. Because of this designation, the Kentucky Human Resource (HR) Policy and Procedure Publication, Issue 10-2016, states that leave for voting on a date other than November 8 cannot be claimed as voting leave. Specifically, "[the] timesheet record should reflect the full holiday entitlement and cannot also have four hours of voting leave on the timesheet [.]" In addition, "No leave for absentee voting should be approved. Employees are given the day off for Presidential Election Day. If an employee chooses to work as an election officer on Presidential Election Day or will be out of town that day, they may cast an absentee ballot but should not be given voting leave time to do so."

In light of this, auditors anticipated that neither election officer leave nor voting leave would be claimed during the period when voting was allowed for the 2016 general election. However, eight individuals claimed voting leave, and eight other individuals claimed leave to

work polls during this election. In total, 31.5 hours were related to voting leave, and 33 hours were related to election officer leave. Review of the pay records in KHRIS revealed 13 of these individuals also received either pay or compensatory time for the holiday.

Leave For Working Election Polls And Voting Leave Claimed On Same Day

According to Personnel, employees are entitled to use either election officer leave or voting leave, but not both, in a single day. If the employee works the polls in the precinct in which they are registered to vote, the entire day should be coded to the election officer leave code. If an employee decides to vote absentee, the employee would be entitled to voting leave if they submit an absentee ballot on a day other than election day, so long as it is on a day the employee would normally work, per 101 KAR 2:102 Section 7 and 101 KAR 3:015 Section 7. Voting leave would then be claimed on the day the absentee ballot was cast.

The KHRIS time data was used to find instances where the leave code for election officer leave was used in conjunction with voting leave on a single day in fiscal year 2016. Because election officer leave can be claimed for the primary, the general, and any special elections, the instances will be presented in whole, instead of being reported by election. A total of 57 instances related to 36 individuals were found. These instances related to 206 hours of election officer leave, and 228 hours of voting leave. However, it should be noted that no instances were found where the combined hours claimed for voting and working polls during the election exceeded the individual's total hours of work for the day.

Of these exceptions, four instances related to three individuals that claimed to also work at their normal state employment on the same day the election officer leave and voting leave was claimed. On all four occasions, the additional time was converted to compensatory time and accumulated in KHRIS for later use. In addition, one individual claimed eight hours of election officer leave, four hours of voting leave, and an additional two hours of compensatory leave on the same day. The individual in question is a salaried employee on a 40-hour workweek with a 24-hour/7-day schedule. Although voting leave and leave to work polls may not be claimed on the same day, it would be the agency's determination of whether this individual was scheduled for a 14-hour shift.

Recommendations

We recommend the following:

- Personnel should reiterate and clarify the rules for leave claims on presidential election days for employees and managers who review and approve timesheets.

- Personnel should resolve the ambiguity regarding election officer leave and whether this type of leave may be used on non-election days, such as for election officer training. Given the differences of opinion under the current regulation, that regulation may require amendment to provide clear guidance on this issue.
- Personnel should provide more clarification related to the restriction of claiming both voting leave and election officer leave on the same day. Specifically, if an individual casts their ballot while working as an election officer, they are not eligible to claim voting leave. However, if they cast an absentee ballot on another day they are normally scheduled to work, they may claim voting leave on that day.

Finding 5: Election Processing Records Were Not Maintained By Some County Clerks

During review of election processing records, county clerks in five counties were unable to provide all or portions of the records for one or both elections. Those counties were Boone, Breathitt, Elliott, Green, and Metcalfe. Due to the failure to maintain these records, discrepancies between the KHRIS and KSBE voter history records match could not be verified for 21 of the 909 employees for the 2015 general election, and for 12 of the 1,126 employees for the 2016 primary election. Therefore, a determination of these 33 employees' eligibility to receive voting leave could not be made. If these individuals did not vote, the cost to the Commonwealth of the unearned benefit would be a total of $2,295.49. 725 KAR 1:061 Section 1(3) requires local government agencies, including county clerks, to comply with applicable retention schedules. The County Clerk Records Retention Schedule requires election processing records to be retained for a minimum of 22 months after the date of the election.

The following counties could not produce the precinct books for the elections indicated upon request:

- Boone County – 2015 general election
- Breathitt – 2016 primary election
- Elliott – Records for two precincts for the 2016 primary election
- Green – 2015 general election and 2016 primary election
- Metcalfe – 2015 general election

Recommendations

KSBE should provide reminders to county clerks about their responsibilities concerning the retention of election processing records in accordance with the Commonwealth's retention schedules.

KENTUCKY PERSONNEL CABINET'S MANAGEMENT RESPONSE

KENTUCKY PERSONNEL CABINET

MATTHEW G. BEVIN
GOVERNOR

501 HIGH STREET, 3RD FLOOR
FRANKFORT, KENTUCKY 40601
PHONE (502) 564-7430
FAX (502) 564-7603
HTTPS://PERSONNEL.KY.GOV

THOMAS B. STEPHENS
SECRETARY

November 30, 2017

Hon. Mike Harmon
Auditor of Public Accounts
209 St. Clair Street
Frankfort, Kentucky 40601

RE: Examination of Commonwealth of Kentucky Election Leave Use

Dear Auditor Harmon:

On behalf of the Kentucky Personnel Cabinet, please accept this letter in response to your draft report on the Examination of Commonwealth of Kentucky Election Leave Use. The draft report was received on Monday, November 27, 2017.

Your draft sets forth various recommendations for the Personnel Cabinet pertaining to election leave use. We will thoroughly review your recommendations in accordance with our statutes, regulations, and policies. We will respond within the requested sixty (60) day timeframe.

Thank you for your time and attention to this matter.

Sincerely,

Thomas B. Stephens
Secretary

KENTUCKY STATE BOARD OF ELECTIONS' MANAGEMENT RESPONSE

COMMONWEALTH OF KENTUCKY
STATE BOARD OF ELECTIONS
ALISON LUNDERGAN GRIMES
Secretary of State & Chief Election Official

November 30, 2017

The Honorable Mike Harmon
Auditor of Public Accounts
209 St. Clair Street
Frankfort, KY 40601

Dear Auditor Harmon,

Thank you for the opportunity to respond to your report on Election Leave Use.

The State Board of Elections appreciates the recommendations the report has made regarding the Kentucky Voter Registration System, and this agency is reviewing them carefully for potential necessary action. We look forward to responding more thoroughly to the recommendations. To my knowledge, this is the Auditor's first significant review of the data contained in the system, and it is welcomed.

Secretary of State Alison Lundergan Grimes, the chair of the Board of Elections and Kentucky's chief elections official, is staunch in her commitment to administering the Commonwealth's elections in a manner which is efficient, effective, secure, and inspires the confidence of voters in the process. During her tenure, Secretary Grimes has led the Board in the modernization of elections. We have introduced online voter registration for all Kentuckians, implemented an online portal for military and overseas voters that streamlines their voting process, and are moving Kentucky toward electronic poll books.

Each of these technological advancements improves the accuracy of our elections and the voter experience, and they have been deployed while balancing the important need for security – especially in the current environment in which foreign adversaries increasingly target our American elections.

Some of your recommendations include issues Secretary Grimes herself has previously raised and the State Board of Elections is working to remedy, including allowing the Voter Registration System to present historical snapshots of the data. To be sure, this agency is proud of its system built by Kentucky's own developers and is a model for other states. The system developed during Secretary Grimes' tenure exceeds the standards of state and federal law for storing voter data, but we are working to include more reporting functions.

Other findings of your report articulate inaccuracies inherent in any data system reliant on mostly handwritten records. Kentucky's voter registration data was until last year entirely based on paper registration. To eliminate any errors, it would require county clerks and their staffs to perfectly decipher handwriting and make no errors when inputting information into the registration system – a painstaking and nearly impossible task.

140 WALNUT STREET
FRANKFORT, KY 40601-3240

(502) 573-7100
FAX (502) 573-4369 OR (502) 696-1952
WEBSITE: www.elect.ky.gov

Auditor Harmon
November 30, 2017

Fortunately, online voter registration reduces these errors and is already leading to more accurate Kentucky records. Using the portal at GoVoteKY.com, registrants submit electronic applications directly to the voter registration system, removing the need for clerks to interpret handwritten forms and to manually enter the voter's personal information. Each application is reviewed and approved by clerks' offices.

Finding 3 mentioning the validation of voter information, such as social security numbers, assumes county clerks and the State Board of Elections have the statutory authority – and the resources – to validate information voters provide on voter registration applications. There is no statutory requirement or authority for our clerks or the State Board of Elections to look for information beyond the four corners of a voter's registration application. State law also does not provide either office with investigatory power. When an individual applies to be a voter, he or she swears to be providing true and correct information. Further, as your report notes, a social security number is not required by state or federal statute to be registered to vote, so the attempt to validate that information would prove to be an imprudent use of already scarce county and state resources.

Another element in the Auditor's report concerns the assignment of voter credit. I am happy to report that the upcoming implementation of electronic poll books statewide will significantly improve accuracy and make voter credit assignments almost immediate, as well as provide more useful information about the administration of our elections. For decades, voter credit assignment has been a process of manually scanning paper precinct rosters, which has taken months following our elections. Electronic poll books will save the State Board of Elections time, manpower, and significant costs and at the same time lead to more accurate records.

Secretary Grimes and the State Board of Elections share your view that Kentucky citizens deserve a government that is accountable and serves their interests. This agency will undertake a careful review of your recommendations and looks forward to responding in more detail.

Sincerely,

Mary Sue Helm
Interim Executive Director
Kentucky State Board of Elections

AUDITOR'S REPLY TO THE KENTUCKY STATE BOARD OF ELECTIONS' MANAGEMENT RESPONSE

Auditor's Reply to the Kentucky State Board of Elections' Management Response

The APA's examination did not evaluate any proposed electronic poll book system or other systems not in place at the time of the examination, and therefore, the APA does not render an opinion regarding these plans.