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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 2021 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 findings:

The Owsley County Clerk did not comply with Department for Local Government (DLG) requirements regarding approval and submission of annual budget, quarterly financial reports, and annual settlement: This is a repeat finding and was included in the prior year audit report as Finding 2020-001. The county clerk presented her budget and annual order setting maximum salary for deputies and assistants to the fiscal court for calendar year 2021; however, it was not presented in a timely manner as required by the Department for Local Government (DLG) guidelines. Furthermore, the county clerk has not submitted her annual settlement and excess fees to the fiscal court for the calendar year ending December 31, 2021, nor has she submitted the quarterly financial reports and annual settlement to DLG as required.

Per the county clerk, the office lost one full-time employee in early February and a replacement was not hired. In addition to being down one employee for most of calendar year 2021, the office had to close for several weeks due to COVID. These issues have put the county clerk's office behind in processing documentation timely and filing reports.

The lack of compliance with statutory 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 this authority, 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 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.

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(1) states, "[i]n 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..."

KRS 64.152(2) states, "[a]t the time of filing the statement required by subsection (1) of this section, the 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 comply with the applicable statutes and the DLG manual by submitting her annual budget, quarterly financial reports, and annual settlement to DLG as required. In addition, we recommend the county clerk submit her annual settlement and excess fees accurately and completely to the fiscal court no later than March 15.

County Clerk's Response: The official did not provide a response.

The Owsley County Clerk is not remitting fees in compliance with Kentucky Revised Statutes (KRS): This is a repeat finding and was included in the prior year audit report as finding 2020-002. During calendar year 2021 it was noted that the payments for the following items were not remitted in compliance with the corresponding Kentucky Revised Statutes (KRS).

The county clerk collects motor vehicle property tax receipts which are to be paid to the state, county, and districts on or before the tenth of the following month; however, for calendar year 2021 the payments and reports were not submitted timely. Eleven of 12 monthly payments due to the state, county, and districts were paid late, (seven were late by five days or less and one month payment was late because the office was closed due to COVID-19).

The county clerk collects delinquent tax receipts which are to be paid to the state, county, and districts on or before the tenth of the following month. However for calendar year 2020, the payments and reports were not submitted timely. Delinquent tax collections due to the state, county, and districts were not paid timely for 11 months(seven of the 11 payments were made within five days after the due date of the tenth of the month).

The county clerk collects legal processing receipts which are to be paid to the state on or before the tenth of the following month; however, for calendar year 2021, six of 12 payments due to the state were paid late as noted below:

- January, March, August, September, October, and December checks were not issued/delivered timely.

The county clerk collects affordable housing receipts which are to be paid to the state by the tenth of the month after the quarter ends; however, for calendar year 2021, the county clerk made monthly payments instead of quarterly payment for all four quarters. Since the payments are not due until the tenth of the month after the quarter ends, some of the quarterly payments were made on time and some were late. Of the 12 payments made, two payments were not made timely.

The county clerk collects deed transfer tax receipts which are to be paid to the county by the tenth of the month after the quarter ends; however, for calendar year 2021, the county clerk made monthly payments instead of quarterly payment for all four quarters. Since the payments are not due until the tenth of the month after the quarter ends, some of the quarterly payments were made on time and some were late. Of the 12 payments made, four payments were not made timely.

Due to the lateness of the payments due to the state, the county clerk has received numerous fees, penalties, and interest notifications from the state going back to 2013 and continuing into 2020. The total presently known due to the state in fines, penalties, and interest is \$226. Since fees, penalties, and interest are not an allowable office expense, the county clerk will be personally responsible for the payment of these bills. In addition, the county clerk's records indicate she had made additional late payments in calendar year 2021, so there could be additional invoices she had not received yet which will increase the amount due.

The county clerk stated she did not have adequate controls and procedures in place to ensure disbursements were made timely; nevertheless, 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. However, due to COVID-19 parts of calendar year 2020 and 2021 were not in compliance. She further stated that her office had to close several times due to COVID-19 which has caused a setback in implementing the new controls and procedures that were developed in calendar year 2019. In addition, in February 2021, she lost one full-time employee which will further hamper her office from ensuring payments and reports can be made and processed 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 taxpayers due to lack of funding. In addition, the county clerk is not in compliance with KRS which 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 department for the prompt payment to the state of other state tax moneys collected by the county clerk.”

KRS 134.126 states in part, “(3) [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)(a) outlines the fees charged by county clerks and says in part, “2. The thirty-three dollar (\$33) fee imposed by this subsection shall be divided as follows: a. Twenty-seven dollars (\$27) shall be retained by the county clerk; and b. 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: “(3) [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.”

KRS 131.180(1) states, “[a]ny taxpayer who files any return or report after the due date prescribed for filing or the due date as extended by the department shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty equal to two percent

(2%) of the total tax due for each thirty (30) days or fraction thereof that the report or return is late. The total penalty levied pursuant to this subsection shall not exceed twenty percent (20%) of the total tax due; however, the penalty shall not be less than ten dollars (\$10).”

KRS 131.183(1)(a) states, “[e]xcept for the addition to tax required when an underpayment of estimated tax occurs under KRS 141.044 and 141.305, all taxes payable to the Commonwealth not paid at the time prescribed by statute shall accrue interest at the tax interest rate.”

We recommend the county clerk pay over receipts timely to ensure compliance with all KRS and to prevent penalties and interest payments being due for late payments. We further recommend the county clerk settle late fees, penalties, and interest, due to the Department of Revenue.

County Clerk’s Response: The official did not provide a response.

The Owsley County Clerk did not deposit funds timely: This is a repeat finding and was included in the prior year audit report as Finding 2020-003. The county clerk did not process receipts timely nor did her office make daily deposits. Test of daily receipts for the week of October 18 through October 23, noted the following issues:

- October 20, 2021 receipts included 10 checks. Five checks were dated over a week prior to processing with dates of August 19 and September 20 through September 27, 2021.
- October 21, 2021 receipts through October 23, 2021 receipts were not deposited until November 1, 2021, which is not timely.

The county clerk stated the week selected for testing is the week the only other employee in the office was on vacation. She further stated the five checks that were not processed and deposited timely were mail items which are processed as time allows. She further stated that she has changed the process and the daily deposits have been made timely apart from issues beyond her control such as the deputy off due to COVID or leave, which leaves only one person in the office to perform all functions. Delaying deposit can increase 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, “[d]aily deposits intact into a federally insured banking institution. (KRS 68.210)”, emphasis added. Additionally, strong internal controls require all payments be deposited timely and on the date received.

We recommend the county clerk comply with KRS 68.210 regarding deposits. 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: The official did not provide a response.

The Owsley County Clerk’s Office does not have adequate segregation of duties: This is a repeat finding and was included in the prior year audit report as Finding 2020-004. The Owsley

County Clerk and her employees all collect cash and process transactions. In addition, the Owsley 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.

According to the county clerk, 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 Owsley 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 Owsley 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: The official did not provide a response.

The Owsley County Clerk did not prepare franchise tax bills promptly: This is a repeat finding and was included in the prior year audit report as Finding 2020-005. The county clerk received 15 notifications from the Department of Revenue regarding certifications for 2021 franchise bills. Two of the 15 notifications were billed and turned over to the sheriff in a timely manner. Four franchises bills were issued by the Department of Revenue between January 14, 2021 and June 9, 2021; however, these bills were not billed by the county clerk until August 17, 2021. Nine franchises bills were issued by the Department of Revenue between October 15, 2021 and December 29, 2021; however, these bills were not billed by the clerk until December 29, 2021.

The county clerk stated she has now acquired a computerized program to help expedite the process. Since the county, school district, sheriff, and other taxing districts rely on franchise taxes to create their budgets and meet the associated expenses, not issuing franchise taxes bills timely could have a negative cash flow effect on the county, districts, or sheriff.

In accordance with KRS 133.220, the county clerk is the local official responsible for the preparation of property tax bills each year. Public service (franchise) and other centrally assessed companies are handled in Frankfort by the Division of State Valuation, Office of Property Valuation, within the Department of Revenue. Assessments for these companies can get quite complicated and they can be finalized at any time during the year. This means that the county

clerk's office will likely receive assessment certifications throughout the year. When these certifications are received by the clerk, a franchise property tax bill needs to be generated as soon as possible.

We recommend the county clerk implement procedures and controls to ensure franchise tax bills are prepared promptly after receiving the state assessment certification from the state and recommend they are immediately presented to the sheriff to be mailed and collected.

County Clerk's Response: The official did not provide a response.

The Owsley County Clerk has not submitted her title applications timely: When a vehicle is bought or sold the customer will go to the county clerk to request a new title. The customer will provide the information to the county clerk and pay a fee based on the vehicles value. The county clerk should submit a title application and supporting documentation for the customer to the Kentucky Transportation Cabinet (KYTC) to receive a first-time title. However, based on a report received from KYTC, the county clerk has not submitted the title applications and supporting documentation timely. As of August 2022, the county clerk had 41 missing transmittals for calendar year 2021, and an additional 93 missing transmittals for calendar year 2022. Although the county clerk has continued to file the transmittals as time allows and since August 2022 has made progress in getting the transmittals submitted, this is an ongoing issue.

The county clerk stated that during calendar year 2021 she lost one employee who was not replaced and had to close her office several times during the year due to COVID-19. In addition, Lee County flooded and the courthouse was closed for an extended period of time, which caused the citizens of Lee County to seek another means of processing their vehicle titles, which ended up being in the Owsley County Clerk's Office, increasing the flow of business without any additional employees. These issues caused the office to get behind on submitting reports and transmittals in a timely manner. She further stated it was her goal to work on getting reports and transmittals caught up as the opportunity arose while still having the office open and waiting on customers. She stated that she has been trying to get the transmittals caught up and has sent some of the past due transmittals to KYTC; however, with the office short one employee she has not been able to catch up.

The county clerk is not in compliance with KRS 186A.165 and customers are not receiving titles timely which can prevent them for conducting business regarding the sale and trade of their vehicles.

KRS 186A.165 states, "[n]ot later than 3 p.m. on the next business day after an application for a first certificate of registration or title for a vehicle is received by him, the county clerk shall prepare on forms supplied by the Department of Vehicle Regulation, an application transmittal record."

We recommend the county clerk comply with the KRS regarding application transmittal records by ensuring timely provision to the Department of Vehicle Regulation. We further recommend the county clerk develop a plan to remit the past due transmittal reports.

County Clerk's Response: The official did not provide a 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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