



Auditor of Public Accounts
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FOR IMMEDIATE RELEASE

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Harmon Releases Audit of Powell County Sheriff's Fee Account

FRANKFORT, Ky. – State Auditor Mike Harmon today released the audit of the 2020 financial statement of Powell County Sheriff Danny Rogers. State law requires the auditor to annually audit the accounts of each county sheriff. In compliance with this law, the auditor issues two sheriff's reports each year: one reporting on the audit of the sheriff's tax account, and the other reporting on the audit of the fee account used to operate the office.

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

Findings 3 and 8 of the audit report will be referred to the Powell County Attorney for further review.

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

The audit contains the following comments:

The sheriff was not sufficiently involved in the daily financial activities of his office: This is a repeat finding and was included in the prior year audit report as Finding 2019-001. The sheriff was not sufficiently involved in the financial daily activities of his office. Numerous weaknesses in the control environment of the Powell County Sheriff's Office significantly increase the risk of fraud and misappropriation of funds and decrease the accuracy of records provided.

This condition is a result of poorly designed policies and procedures; inconsistent, incomplete, and inaccurate implementation of controls; and lack of management oversight and involvement. As a result, we have noted the following deficiencies:

- A lack of segregation of duties over receipts and disbursements.
- A final settlement was not presented to the fiscal court and excess fees were not paid timely for 2020.
- Prior year accounts have not been settled and amounts due to the fiscal court have not been paid.
- Inadequate controls over disbursements.
- Invoices were not paid timely.

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

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

- The sheriff should provide direct oversight of financial reporting for all receipts and disbursements.
- The sheriff should implement internal controls over the financial accounting system that ensure an adequate internal control structure, including management oversight; provide reasonable assurance that assets are safeguarded, and transactions are processed in accordance with applicable laws and regulations; and transactions are recorded, reconciled, processed, and summarized to permit the preparation of reliable financial data.

County Sheriff's Response: I disagree that the sheriff was not involved in the daily financial activities of his office. Someone could not make that assumption only by being here a couple of times a year. I do discuss daily activities with my staff however it may not be documented by handwriting but I am involved in my office and the activities. I not only work the road but I do help in the office taking payments and preparing receipts for fees and property taxes.

At what point would auditors consider me involved in my office daily?

**We are a small office and the daily duties are shared.*

**We will try to present final settlements to the fiscal court in a more timely matter.*

**All quarterly reports have been forwarded to DLG.*

**All accounts now have been closed out any remaining balances have been paid over to the fiscal court.*

Auditor Reply: As noted, the oversight and checks and balances the sheriff performs are not documented; therefore, auditors were unable to verify that oversight had occurred.

The sheriff'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 2019-002. The sheriff's office does not have adequate segregation of duties. The sheriff's bookkeeper collects payments from customers, prepares deposits, writes checks, posts transactions to the receipts ledger, posts checks to the disbursements ledger, and prepares monthly and quarterly reports. The sheriff or another employee did not document oversight of any of these activities.

The sheriff indicated this was caused by a limited budget, which restricts the number of employees the sheriff can hire or delegate duties to. A lack of oversight could result in the undetected misappropriation of assets and inaccurate financial reporting to external agencies, such as the Department for Local Government (DLG).

Segregation of duties over various accounting functions such as opening the mail, preparing deposits, recording receipts and disbursements, and preparing monthly reports, or the implementation of compensating controls, is essential for providing protection from asset misappropriation and inaccurate financial reporting. Additionally, proper segregation of duties protects employees in the normal course of performing their daily responsibilities.

We recommend the sheriff separate the duties involved in receiving cash, preparing deposits, posting to ledgers, preparing monthly bank reconciliations, and comparing financial reports to ledgers. If this is not feasible, due to a limited budget, cross checking procedures could be implemented and documented by the individual performing the procedure.

County Sheriff's Response: See response 001. We would love to hire more employees however they do not stay here due to not being able to compete with other counties salaries and the benefits.

**I go over the bank statements along with both clerks each month when accounts are reconciled dated and initialed by myself and both clerks if able.*

The sheriff has not settled prior year accounts: This is a repeat finding and was included in the prior year audit report as Findings 2019-003 and 2019-005. Per prior year audits from 2012 through 2018, \$10,598 is owed to the fiscal court as additional excess fees due to disallowed disbursements in prior periods as noted in the following table:

<u>Amount Due Personally From Sheriff:</u>		
2018 Fee Audit	660	Disallowed Disbursements
2017 Fee Audit	1,708	Disallowed Disbursements
2016 Fee Audit	1,154	Disallowed Disbursements
2015 Fee Audit	885	Disallowed Disbursements
2014 Fee Audit	4,075	Disallowed Disbursements
2013 Fee Audit	419	Disallowed Disbursements
2013 Fee Audit	750	Salary Overpayment
2012 Fee Audit	947	Disallowed Disbursements
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Total	\$ 10,598	

The sheriff did not have adequate controls in place to ensure liabilities for old accounts were settled correctly and timely. Furthermore, as discussed in Finding 2020-001, the sheriff did not implement adequate oversight procedures to follow up on old accounts to ensure corrective action had been taken as instructed in prior audit periods.

Funds totaling \$10,598 are due from the sheriff to the fiscal court as additional excess fees. In addition to being a violation of statute, failure to settle and close accounts for extended periods of time increases the risk of theft, loss, or misappropriation of funds.

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

We recommend the sheriff consult with the fiscal court and the county attorney to determine how to settle the \$10,598 in additional excess fees due for prior periods resulting from disallowed disbursements in those periods. This finding is being referred to the Powell County Attorney for further review and collection under KRS 64.820.

County Sheriff’s Response: All accounts have been closed and remaining balances were paid over to fiscal court.

**Candy – as addressed many times in prior audits candy was used throughout the year for incentives for school resource, other public services/activities that it was used for and all not used for personal use it was all used for things involving public/community. I know sometimes we used peppermint in the courtroom if needed or if left over it was on the counter.*

**Greeting cards I don’t remember the actual receipts its been several years, however, that was a rare instance due to the fact [name redacted] or [name redacted] always personally provide those and not sure of the reason it was on that particular receipt. Once again any and all cards sent from entire sheriff’s department not for personal use and were used for mostly sympathy for people of our community or other local government agencies during their loss.*

**Knives are equipment and a useful tool. These are good to cut seat belts. These were purchased as equipment and deputy use them on person and are part of their uniform.*

Please explain why a knife purchase used on person and on equipment a disallowed item?

So I do not agree with these items being disallowed.

We are working on resolving these issues.

Auditor's Reply: Regarding disallowed disbursements, as noted in Funk v. Milliken, 317 S. W. 2d 499 (Ky. 1958), Kentucky's highest court ruled that county fee officials' expenditures of public funds will be allowed only if they are necessary, adequately documented, reasonable in nature, beneficial to the public, and not primarily personal in nature. The items noted did not meet the criteria that has been detailed in audit reports for the periods in which disallowed disbursements were noted.

The sheriff did not settle his 2020 fee account and did not present a final settlement to the fiscal court: This is a repeat finding and was included in the prior year audit report as Finding 2019-005. The sheriff did not settle his 2020 fee account and he did not present a final settlement to the fiscal court for calendar year 2020. In order to settle the account, the sheriff should remit excess fees of \$6,808 to the fiscal court. This is a result of a lack of management oversight by the sheriff as described in Finding 2020-001. He did not ensure that an annual settlement was presented to the fiscal court and that excess fees were properly paid. The failure to pay liabilities timely causes the fiscal court to be deprived of funds for significant time periods.

KRS 134.192(1) states, "[e]ach sheriff shall annually settle his or her accounts with the department, the county, and any district for which the sheriff collects taxes on or before September 1 of each year." KRS 134.192(11) states, in part, that the sheriff shall file annually with his or her settlement: (a) "[a] complete statement of all funds received by his or her office for official services, showing separately the total income received by his or her office for services rendered, exclusive of his or her commissions for collecting taxes, and the total funds received as commissions for collecting state, county, and school taxes; and (b) [a] complete statement of all expenditures of his or her office, including his or her salary, compensation of deputies and assistants, and reasonable expenses."

We recommend the sheriff take the necessary steps to ensure the amounts above are collected and paid as soon as possible. We further recommend the sheriff settle his accounts before September 1 of each year hereafter and present the annual settlement to the fiscal court.

County Sheriff's Response: Will work on trying to present final settlement to fiscal court.

The sheriff does not have adequate controls over disbursements: This is a repeat finding and was included in the prior year audit report as Finding 2019-006. The sheriff's office does not have strong internal controls over disbursements. The lack of adequate controls over disbursements, inadequate segregation of duties, and absence of review procedures, as discussed in Findings 2020-001 and 2020-002 led to invoices not being paid timely (see Finding 2020-006).

There were not adequate review procedures in place, as described in Finding 2020-001, to detect, eliminate, or reduce errors. Invoices not being paid timely could result in substantial late fees, penalties, or other ramifications. Strong internal controls require that adequate documentation and sufficient review of all disbursements are necessary to reduce the risk of errors and misstatements. We recommend the sheriff implement procedures that strengthen controls over disbursements to eliminate the exceptions noted above in the future.

County Sheriff's Response: See previous answers.

The sheriff did not pay invoices timely: This is a repeat finding and was included in the prior year audit report as Finding 2019-007. Three invoices in our sample of 20 disbursements were not paid within 30 business days, some several months late. This condition is a result of a lack of internal controls over disbursements as described in Finding 2020-005 and lack of management oversight as described in Finding 2020-001. Failure to pay invoices timely results in noncompliance with statutes and can result in late fees and other penalties.

KRS 65.140(2) states, in part, "all bills for goods or services shall be paid within thirty (30) working days of receipt of a vendor's invoice[.]" KRS 65.140(3) states, "[a]n interest penalty of one percent (1%) of any amount approved and unpaid shall be added to the amount approved for each month or fraction thereof after the thirty (30) working days which followed receipt of vendor's invoice by the purchaser."

We recommend that in order to avoid late fees and penalties and to comply with KRS 65.140, that the sheriff pay invoices within 30 days.

County Sheriff's Response: Will work on resolving these issues.

The sheriff does not have adequate controls in place over fuel purchases: This is a repeat finding and was included in the prior year audit report as Finding 2019-008. The sheriff's office does not have adequate controls over fuel purchases. The sheriff utilizes a third-party fuel purchasing system but does not follow the procedures for fuel purchases the system is designed to monitor. The sheriff receives a monthly invoice from the vendor used for purchasing fuel. These invoices list each person purchasing fuel along with the vehicle mileage, quantity, and price. We noted the following issues regarding fuel purchases:

- Fuel card users routinely did not list the vehicle mileage when purchasing fuel.
- Periodic use of fuel cards by a special deputy (special deputies are sworn officers of the sheriff's office but are not employees and do not receive wages from the sheriff's office). The sheriff's office does not have a policy regarding fuel and vehicle use by special deputies.

The sheriff did not have controls in place to adequately monitor fuel purchases. Besides payroll expenses, fuel purchases are the largest single expense for the sheriff's office. Without proper documentation of these fuel purchases by vehicle unit number and by the assigned deputy, the risk of fuel being purchased for personal use or by unauthorized users greatly increases.

Good internal controls over fuel purchases require the sheriff to ensure that adequate documentation is maintained to support the disbursement, which includes the odometer readings for all vehicles and the person purchasing the fuel. In addition, the sheriff should have a policy regarding fuel purchases by special deputies or other non-employees. In very rare instances, this might be acceptable, but the sheriff should outline the specific situations in which this would be necessary.

We recommend the sheriff properly use this third-party fuel purchasing system and ensure that all fuel purchases are properly supported by proper documentation, which includes accurate odometer readings and designation of proper vehicle unit numbers. We also recommend the sheriff review and reconcile the third-party fuel reports monthly to note any employees not following proper fuel purchase procedures. Furthermore, we recommend the sheriff establish policies and procedures to address fuel card use by special deputies.

County Sheriff's Response: To address the fuel issue; sometimes not often there was instance where card wasn't working they may have use another option of charging at a local business.

**Everyone should be using the correct mileage and card when purchasing fuel.*

**Yes special deputies have fuel cards! Without special deputies it would be hard for small departments to take care of the numerous calls and cases our county takes care of with limited manpower. They only use cards while they are working for no money serving papers or taking county calls! That is the only time or policy that it can be used!*

**Yes fuel is one of the largest expenses for the sheriff's office and if dispatch logs are needed to verify the back and forth from one end of the county to the other for calls, reports, paper services, transports for court, transports to Eastern State and funeral escorts per day are numerous.*

The sheriff has not resolved a possible conflict of interest: This is a repeat finding and was included in the prior year audit report as Finding 2019-010. An employee of the sheriff's office is also serving as a magistrate of the fiscal court, which may constitute a conflict of interest.

On June 5, 2012, the sheriff hired an individual to serve as a deputy sheriff for the sheriff's office. On January 1, 2015, this person was elected to serve as a magistrate of the fiscal court, an incompatible office. The deputy sheriff did not vacate the first office of employment upon being elected to serve on the fiscal court. The employee chose to accept both positions and did not consult with the county attorney or attorney general regarding the potential conflict of interest in doing so.

When this person accepted an appointment as a deputy sheriff then accepted the office of magistrate, his position of deputy sheriff could be vacated as a matter of law. Any actions he has taken as a deputy sheriff after accepting the magistrate appointment may be null and void.

Per the Attorney General's *Conflicts of Interest and Incompatible Offices Manual*, a county officer may not serve as a county employee. KRS 61.080(2) makes the positions of magistrate (justice of the peace) and deputy sheriff incompatible. Also, KRS 61.090 states, "[t]he acceptance by one (1)

in office of another office or employment incompatible with the one (1) he holds shall operate to vacate the first.” In addition, this may constitute a common law incompatibility of office because the office of deputy sheriff as an employee of the county is subordinate to the position of magistrate. OAG 83-252; Hermann v. Lampe, 194 S.W. 122 (Ky. 1917).

Pursuant to KRS 15.025, the attorney general of Kentucky provides legal opinions to public officials to assist them in the performance of their duties. These opinions do not have the force of law but are persuasive and public officials are expected to follow them. On December 30, 2020, Attorney General Daniel Cameron issued OAG 20-19 as requested by Powell County Attorney regarding this specific issue. The opinion states “Because the offices of certified court security officer and county magistrate are functionally incompatible, an individual may not simultaneously hold both positions.”

We recommend the sheriff follow the guidance provided in OAG 20-19 and remedy this conflict of interest immediately. This finding is being referred to the Powell County Attorney for further review.

County Sheriff’s Response: Possible conflict of interest this has been re-hashed for years and has been addressed. Please see previous answers in 2018 audit. This has been discussed multiple times with the county attorney and was not a conflict!

Auditor’s Reply: As noted the Powell County Attorney did request an opinion from the Attorney General and this opinion was just issued on December 20, 2020. The opinion stated, “Because the offices of certified court security officer and county magistrate are functionally incompatible, an individual may not simultaneously hold both positions.”

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

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

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