



**EXAMINATION OF SELECTED  
ADMINISTRATIVE POLICIES AND PURCHASING  
ACTIVITIES OF THE CITY OF VILLA HILLS  
FOR FISCAL YEARS 1995 THROUGH 2000**

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EDWARD B. HATCHETT, JR.  
AUDITOR OF PUBLIC ACCOUNTS

December 28, 2000

Honorable Steve Clark  
Mayor, City of Villa Hills  
719 Rogers Road  
Villa Hills, Kentucky 41017

RE: Examination of Selected Administrative Policies and Purchasing Activities

Dear Mayor Clark:

We have examined selected administrative policies and purchasing and disbursement activities of the City of Villa Hills (City) for fiscal years 1995 through 2000. We also examined the internal controls governing purchases and disbursements made by the City. Our examination resulted from concerns brought to our attention. This report is a final assessment of items previously addressed in our preliminary report dated October 25, 2000.

Our examination was directed by the following objectives:

- To analyze the supporting documentation on file at the City and factual circumstances pertaining to questionable City credit card purchases and disbursements;
- To determine the number of credit cards issued by the City during the last five years, the account number of each card issued, and the identity of each card holder/user;
- To determine the City's policies and procedures for credit card issuance, purchasing guidelines, and payment;
- To determine whether the City's credit card purchases were adequately supported and for a specific public purpose;
- To identify the authorized signers on the City's checking account;
- To determine the City's policies and procedures for petty cash reimbursements; and,
- To recommend practices that would strengthen the City's internal control environment.

Mayor Clark  
December 28, 2000  
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Our examination included, but was not limited to, the following procedures:

- We examined credit card statements and receipts filed at the City for each card issued by the City during fiscal years 1995-2000.
- We examined a sample of invoices billed to the City during 1995-2000.
- We interviewed City employees to gain an understanding of the policies and procedures for credit card issuance, purchasing guidelines, and payment.
- We interviewed City employees to identify authorized signers on the City's checking account.
- We interviewed City employees to gain an understanding of the policies and procedures for petty cash reimbursement.

We wish to thank all those involved for their cooperation during the course of our examination.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ed Hatchett". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Edward B. Hatchett, Jr.  
Auditor of Public Accounts

EBHJr:kct

## Findings and Recommendations

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### Deficient administrative oversight by the City allowed questionable credit card purchases

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The City of Villa Hills, a 4<sup>th</sup> class city located in Kenton County, Kentucky (City), obtained credit cards from July 1, 1995 through June 30, 2000 (period) for individuals holding each of the following positions: Mayor, City Clerk, City Administrator, Police Chief, and Public Works Supervisor. These individuals and other City employees using these credit cards made purchases that lacked documented public purposes and were not supported by receipts on file at the City. The purchases therefore do not appear to be in the best interests of City taxpayers.

The credit card statements we examined revealed \$44,159.48 in questionable purchases. \$18,979.99 of this amount was for purchases supported by receipts (see exhibit 1) but lacking documented public purposes. The remaining \$25,179.49 was not properly supported by receipts filed at the City (see exhibit 1).

Numerous credit card purchases during the period also appear to be inappropriate expenditures of taxpayer funds. According to *Funk v. Milliken*, Ky., 317 S.W.2d 499 (1958), an opinion of Kentucky's highest court, expenditures of public funds should be necessary, reasonable in amount, beneficial to the public, not predominantly personal in nature, and supported by adequate documentation (see exhibit 2). Respective purchases of \$2,232.16, \$2,213.58, \$2,767.00, \$2,654.34, and \$3,202.65 from the Gatehouse Tavern for Christmas parties for City employees and guests were identified for the years 1994 – 1998, one of which explicitly evidenced the purchase of alcoholic beverages. In addition, \$790.43 was spent at Tickets Sports Bar for a City Christmas party in 1999. On three separate occasions during the period, transactions in the amounts of \$95.00, \$152.75, and \$95.50 were processed at the Crossbow Tavern at 1:31 a.m., 12:22 a.m., and 1:36 a.m. The latter two transactions were processed within a few hours after the times noted on Christmas party receipts in 1994 and 1995. We challenge these expenditures of public funds as necessary, beneficial to the public, not predominantly personal in nature, and supported by adequate documentation.

The purchase of alcoholic beverages is explicitly documented on five credit card receipts; while on other receipts, circumstances give rise to the inference that alcoholic beverages were purchased. During our examination, we identified \$1,205.68 used to purchase alcoholic beverages (see exhibit 3). The 1996 Christmas party receipt documented the purchase of 236 alcoholic beverages for a total expenditure of \$818.00 (see exhibit 4). Alcoholic beverage purchases were also made through the City's routine invoicing process. We identified \$306.91 billed to and paid by the City for the purchase of alcoholic beverages in this manner (see exhibits 3 and 5). We fail to see how these purchases of alcoholic beverages with public funds are either necessary or beneficial to the public.

Purchases at restaurants such as Hooters and Outback Steakhouse were normally supported by receipts. However, the public purpose of these meals was not documented. Furthermore, the purchase amounts at these restaurants appear to be excessive. For instance, purchases of \$290.00, \$240.91, \$300.00, and \$225.00 from Outback Steakhouse were identified, while a purchase of \$158.92 from Hooters was noted. Numerous other restaurant purchases were also noted during our examination (see exhibit 1). We found no evidence that these purchases were necessary, reasonable in amount, or for a public purpose.

*Excessive credit card limits*

The credit limits on City credit cards appear to be excessive. According to the City Clerk, credit limits were initially established at \$5,000 for the Mayor and \$2,500 for all other cards. However, during our examination, we noted that these limits had increased to \$10,000 and \$5,000, respectively, during the period. Furthermore, we noted numerous instances of City credit cards being used by City employees not listed as the cardholder. Upon further examination, we could find no documentation by which the cardholder authorized another City employee to use his/her credit card.

*Late credit card payment penalties*

While it appears that the City had ample cash available, we noted late fees and finance charges of \$1,005.16 on numerous credit card statements selected for examination. The late fees appear to be caused by delays in the approval and payment process. Credit card statements are mailed to the City and received by each cardholder, the receipts are

attached by the cardholder (if any are available), and the statements are approved by the cardholder for payment. The statements are then forwarded to the City Accountant for account coding and to the Assistant City Clerk for recording. The Assistant City Clerk prepares a check and forwards it to the Mayor and City Clerk for their signatures. According to the City Accountant and former Mayor, statements are not always approved and forwarded for payment in a timely manner. Neither the former Mayor nor the City Clerk could explain why balances were not paid in full, resulting in finance charges being assessed against the City.

### *Recommendations*

We recommend the City develop a written policy to define allowable official expenditures. The policy should require that expenditures of the City's public funds be necessary, reasonable in amount, beneficial to the public, not predominately personal in nature, and supported by adequate documentation. The City may consider the following items to be examples of nonallowable expenditures: gifts, entertainment, or meals unrelated to official public business, and expenditures or purchases lacking proper and accurate documentation.

We recommend the City disallow any expenditure for which the supporting documentation does not demonstrate a direct and proper relationship to a public purpose of the City. We further recommend that any such disallowed expenditure be reimbursed to the City.

We recommend the City establish and maintain credit limits with financial institutions at amounts sufficient to conduct official City business. Credit limits should be established at levels that reduce the City's risk of future payment liability. Furthermore, the sharing of City credit cards by City employees should be prohibited. City credit cards should only be used by those employees issued a card. City employees not issued a credit card should use their personal credit cards for official City business and be reimbursed by the City for allowable expenditures.

We recommend the City avoid unnecessary late fees and finance charges by paying all credit card balances in full by the specified date. All credit card statements should be received by the Assistant City Clerk. Receipts should be forwarded to the Assistant City Clerk by each cardholder

after each purchase. The Assistant City Clerk should reconcile all credit card purchases listed on the monthly statements with receipts. Any questionable purchases should be examined by the Assistant City Clerk and the City should be reimbursed for any disallowed purchases.

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**The City's failure to formalize travel regulations diminished its ability to control expenses**

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We noted numerous lodging, meal, and long distance telephone charges on the City's credit cards during our examination. These charges appear to be made by City employees and officials while on official City business. However, the public purpose for these trips was frequently not documented. Additionally, we identified meals and long distance telephone charges during these trips that appear to be excessive. According to the City Clerk, the City does not have a written policy on travel and limitations for travel expenses.

*Recommendation*

We recommend the City adopt an ordinance developing a written policy establishing travel regulations and maximum amounts allowable for travel-related expenses.

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**The City granted check signature authority to two members of the City Council**

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Both the Mayor and the Clerk must sign checks written by the City. Additionally, two members of the City Council were granted signature authority in the absence of one of the primary signers. Granting signature authority to City Council members is contrary to standard fiscal control practices. However, due to limited City personnel, we recognize the need to grant signature authority to a member of the City Council. This practice assures checks are controlled through dual signatures and adequate segregation of duties.

*Recommendation*

We recommend the City authorize only one member of the City Council to sign checks in the absence of the Mayor or City Clerk. The City Council should elect the alternate signer; however, in order to reduce the appearance of any conflicts of interests, we further recommend that the alternate signer not be related to one of the primary check signers.

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**The City failed to employ best practices in its handling of petty cash**

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The City uses a \$100 petty cash fund for small purchases. The City Clerk serves as the custodian of this fund. In order to be reimbursed for business purchases, employees must present a receipt to the City Clerk. She will complete a

“petty cash slip,” reimburse the employee, and place the receipt and petty cash slip in the petty cash drawer. When the petty cash balance needs to be replenished, the Clerk will write a check made payable to herself, cash the check, and return the cash to the petty cash fund.

*Recommendation*

We recommend the City develop a written policy for administering the petty cash fund. A ledger should be maintained to record the disbursements and deposits of the fund. Further, the City should develop a petty cash voucher form to be completed by each individual requesting reimbursement. This form should include the name and signature of the person requesting reimbursement and the reason for the expenditure. Receipts and other pertinent documentation should be attached to the cash voucher form. Checks written to replenish the fund should have two signatures and not be signed with a signature stamp. Finally, unannounced counts of the petty cash fund should be performed periodically by someone other than the fund custodian.

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**A credit balance was maintained on a City credit card for over one year**

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On July 26, 1996, Fifth Third Bank (Fifth Third) issued a cashier’s check to the City for \$1,173.65 to eliminate an existing credit balance on one of the City’s credit cards. According to the former Mayor, a City credit card was used to reserve lodging at a local hotel for an upcoming conference. Each City official attending the conference paid for lodging with his/her personal credit card. However, the hotel also charged the City’s credit card for lodging. The City then asked Fifth Third for a refund.

According to the August 1996 credit card statement, the \$1,173.65 refund issued to the City was posted on July 29, 1996, leaving a new balance of \$0.00 (see exhibit 6). However, the September 1996 credit card statement illustrates a payment received by Fifth Third and posted on August 20, 1996, for \$1,173.65. Thus, the balance on the credit card was re-credited to \$1,173.65 (see exhibit 7).

Neither the former Mayor nor the City Clerk could remember the ultimate disposition of the refund check. Based on an examination of the bank statements from August 1996 through December 1996, it does not appear that the refund check was ever deposited into one of the City’s bank accounts. Furthermore, representatives from Fifth

Third told us that records related to the cashiers check are only maintained for three years. Due to the unavailability of this documentation, we were unable to determine the check's disposition.

During our examination into the refund check, we noted that the re-credited account maintained a credit balance until October 1997, when a \$1,425.09 refund check was issued (see exhibit 8). Bank statements examined did not reflect the deposit of this check. Additionally, due to the amount of time lapsed since the transaction date bank records for the refund check were not available for examination. Therefore, we were unable to determine the check's disposition.

*Recommendation*

We recommend the City act as custodian of its funds and eliminate any significant credit balances on the City's credit cards. The proceeds should be immediately deposited into an interest bearing City bank account. Maintaining a credit balance for an extended period of time is not in the best interests of the City.

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**Other financial matters  
examined**

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In addition to the matters already addressed, our preliminary report identified a check (#21006) for \$200 supported by a confidential memorandum requesting the funds to be used for a drug investigation. At the time of our preliminary report, we had not determined whether the funds were returned and re-deposited or maintained at the Police Department for future use. Based on the results of our examination, we determined that the \$200 is currently maintained by the Police Department for future investigations. A finding and recommendation did not result from our examination of this issue.

**EXHIBITS**

**EXHIBIT 1**

**CITY OF VILLA HILLS**  
**QUESTIONABLE CREDIT CARD TRANSACTIONS**  
**FROM 1994 - 2000**

Cardholder	Transaction Date	Vendor	Transaction Amount	Amount of Questionable Transaction Supported by Documentation	Amount of Questionable Transaction NOT Supported by Documentation	Comments
Public Works Supervisor	7/6/1994	Specialties Unlimited--Vermont	\$ 1,014.00	\$ 1,014.00	\$	Purchase of Lapel Pins
	7/26/1994	Hyatt Hotel--Lexington,KY	65.67	65.67		Purpose of trip not documented
	7/26/1994	Hyatt Hotel--Lexington,KY	65.67		65.67	No documentation
Police Chief	8/4/1994	Quality Hotel--Covington,KY	248.87	248.87		Purpose of trip not documented
	8/5/1994	Calibre Press, Inc.--Illinois	389.65		389.65	No documentation
	8/19/1994	Days Inn--Girard,OH	216.77	216.77		Purpose of trip not documented
	10/2/1994	Crossbow Tavern--Ft. Mitchell,KY	95.00	95.00		Transaction processed at 1:31 a.m.
	10/14/1994	Lake Cumberland Park--Jamestown,KY	77.04	77.04		Purpose of trip not documented
	11/11/1994	Barren River Lake Park--Lucas,KY	530.67	530.67		Purpose of trip not documented
	11/11/1994	Barren River Lake Park--Lucas,KY	11.08		11.08	No documentation
Public Works Supervisor/ City Clerk	8/30/1994	Van Leunen's/All About Sports--Erlanger,KY	82.66	82.66		Purchase of athletic items
	9/6/1994	Lake Cumberland Resort--Jamestown,KY	77.04	77.04		Purpose of trip not documented
	9/13/1994	Multiple Sclerosis--Cincinnati,OH	400.00	400.00		Purpose not documented
	9/29/1994	Outback Steakhouse--Crescent Springs,KY	290.00	290.00		Business purpose not documented
	10/2/1994	Chaucer's--Ft. Mitchell,KY	75.97	75.97		Business purpose not documented
Former Mayor/ Police Chief	12/9/1994	Gatehouse Tavern--Ft. Mitchell,KY	2,232.16	2,232.16		Christmas Party
	12/10/1994	Crossbow Tavern--Ft. Mitchell,KY	152.75	152.75		Transaction processed at 12:22 a.m.
Police Chief	5/20/1995	Days Inn--Girard,OH	142.27		142.27	No documentation
	7/18/1995	K-Mart--Florence,KY	279.79	279.79		Business purpose not documented
	8/11/1995	Hyatt Hotel--Lexington,KY	355.82		355.82	No documentation
	8/11/1995	Hyatt Hotel--Lexington,KY	69.76	69.76		Purpose of trip not documented
	12/9/1995	Crossbow Tavern--Ft. Mitchell,KY	95.50	95.50		Transaction processed at 1:36 a.m.
	4/10/1996	Longhorn Steaks--Cincinnati,OH	88.86	88.86		No documentation
	4/23/1996	The Daisy Flowers Shop--Crescent Springs,KY	74.18	74.18		Purpose not documented
	5/18/1996	Holiday Inn--Bowling Green,KY	270.22	270.22		Purpose of trip not documented
	8/13/1996	Kunz 4th & Market--Louisville,KY	48.23	48.23		Excessive meal expenditure during trip
	8/17/1996	Galt House--Louisville,KY	376.54	376.54		Purpose of trip not documented

Cardholder	Transaction Date	Vendor	Transaction Amount	Amount of Questionable Transaction Supported by Documentation	Amount of Questionable Transaction NOT Supported by Documentation	Comments
Former Mayor	5/30/1995	JR's Executive Inn--Paducah,KY	243.08		243.08	Reservation charge--no documentation for purpose of trip.
	7/26/1995	Outback Steakhouse--Crescent Springs,KY	11.00	11.00		Business purpose not documented
	7/26/1995	Outback Steakhouse--Crescent Springs,KY	60.52	60.52		Business purpose not documented
	8/23/1995	Outback Steakhouse--Crescent Springs,KY	60.82	60.82		Business purpose not documented
	9/5/1995	Hooters--Newport,KY	24.77	24.77		Business purpose not documented
	10/15/1995	JR's Executive Inn--Paducah,KY	971.26		971.26	No documentation
	12/8/1995	Gatehouse Tavern--Ft. Mitchell,KY	2,213.58	2,213.58		Christmas Party
	9/11/1996	Bravo's of Louisville--Louisville,KY	395.19		395.19	No documentation
	9/16/1996	Galt House--Louisville,KY	1,544.79		1,544.79	No documentation
	9/17/1997	Columbia's Steakhouse--Lexington,KY	58.66		58.66	No documentation
	9/18/1997	Columbia's Steakhouse--Lexington,KY	214.82		214.82	No documentation
	10/1/1997	Plaza Hotel--Bowling Green,KY	98.12		98.12	No documentation
	10/9/1997	Behle Street Café--Covington,KY	30.65		30.65	No documentation
	Dec-97	Gatehouse Tavern--Ft. Mitchell,KY	2,654.34		2,654.34	Christmas Party
	Dec-1998	Gatehouse Tavern--Ft. Mitchell,KY	3,202.65		3,202.65	Christmas Party
	12/16/1998	Drawbridge Food Services--Ft. Mitchell,KY	66.87		66.87	No documentation
	12/23/1998	Hooters--Newport,KY	158.92		158.92	No documentation
Public Works Supervisor	4/9/1995	Holiday Inn--Louisville,KY	123.46	123.46		Purpose of trip not documented
	4/26/1995	Hyatt Hotel--Lexington,KY	122.58		122.58	No documentation
	4/26/1995	Hyatt Hotel--Lexington,KY	26.35		26.35	No documentation
	5/26/1995	Galt House--Louisville,KY	212.11	212.11		Purpose of trip not documented
	7/25/1995	Service Merchandise--Florence,KY	119.66		119.66	No documentation
	10/3/1995	Hyatt Hotel--Lexington,KY	172.15	172.15		Purpose of trip not documented
	5/7/1996	Radisson--Lexington,KY	26.94		26.94	No documentation
	5/8/1996	Radisson--Lexington,KY	6.84		6.84	No documentation
	5/8/1996	Radisson--Lexington,KY	72.35		72.35	No documentation
	5/21/1996	Radisson--Lexington,KY	26.33		26.33	No documentation
	5/22/1996	Radisson--Lexington,KY	7.37		7.37	No documentation
	5/23/1996	Radisson--Lexington,KY	8.37		8.37	No documentation
	5/24/1996	Radisson--Lexington,KY	8.37		8.37	No documentation
	5/24/1996	Radisson--Lexington,KY	230.25	230.25		Purpose of trip not documented
	12/9/1996	Drawbridge Food Services--Ft. Mitchell,KY	167.36	167.36		Business purpose not documented
	1/6/1997	U-Haul--Elsmere,KY	113.20	113.20		Business purpose not documented
	9/26/1997	Spencer Gifts--Florence,KY	184.88		184.88	No documentation
	10/1/1997	Premiers Party--Florence,KY	31.13		31.13	No documentation
	10/7/1997	Premiers Party--Florence,KY	53.04		53.04	No documentation
	10/7/1997	Spencer Gifts--Florence,KY	22.04		22.04	No documentation
	10/10/1997	Theatre House--Covington,KY	89.65		89.65	No documentation
	10/14/1997	Spencer Gifts--Florence,KY	190.31		190.31	No documentation
	10/16/1997	Premiers Party--Florence,KY	54.22		54.22	No documentation
	10/17/1997	Premiers Party--Florence,KY	60.00		60.00	No documentation
	11/25/1997	Sun T.V.--Florence,KY	465.94	465.94		Business purpose not documented
	Oct-1998	Premiers Party--Florence,KY	100.00		100.00	No documentation
	Oct-1998	Spencer Gifts--Florence,KY	152.59		152.59	No documentation
	10/16/1998	Premiers Party--Florence,KY	78.61		78.61	No documentation

Cardholder	Transaction Date	Vendor	Transaction Amount	Amount of Questionable Transaction Supported by Documentation	Amount of Questionable Transaction NOT Supported by Documentation	Comments
Public Works Supervisor	10/19/1998	Premiers Party--Florence,KY	38.65		38.65	No documentation
(continued)	10/19/1998	Spencer Gifts--Florence,KY	83.82		83.82	No documentation
	10/19/1998	Theatre House--Covington,KY	91.84		91.84	No documentation
	10/24/1998	Halloween Express--Florence,KY	32.29		32.29	No documentation
	10/24/1998	Premiers Party--Florence,KY	20.97		20.97	No documentation
	10/25/1998	Premiers Party--Florence,KY	44.49		44.49	No documentation
	Dec-1998	Cork-N-Bottle--Crescent Springs,KY	16.28	16.28		Business purpose not documented
	1/26/1999	U-Haul--Elsmere,KY	63.60		63.60	No documentation
	1/29/1999	U-Haul--Elsmere,KY	36.91		36.91	No documentation
	1/29/1999	Burbanks Real Bar-B-Que--Ft. Mitchell,KY	101.88		101.88	No documentation
Former City Administrator	9/15/1995	Greyhound Restaurant--Ft. Mitchell,KY	63.25		63.25	No documentation
	10/12/1995	Outback Steakhouse--Paducah,KY	240.91		240.91	No documentation
	2/6/1996	Radisson--Lexington,KY	22.30		22.30	No documentation
	2/7/1996	Radisson--Lexington,KY	15.08		15.08	No documentation
	2/8/1996	Radisson--Lexington,KY	175.86		175.86	No documentation
	3/8/1996	Jackson Florist--Covington,KY	47.70		47.70	No documentation
	3/20/1996	Radisson--Lexington,KY	158.00	158.00		Purpose of trip not documented
	4/26/1996	Holiday Inn--Bardstown,KY	170.95	170.95		Purpose of trip not documented
	8/15/1996	AJ Jolly Park--Alexandria,KY	130.00	130.00		Golfing fees for 5 people
	8/15/1996	J&K One Stop--Alexandria,KY	12.77	12.77		Business purpose not documented
	8/15/1996	J&K One Stop--Alexandria,KY	6.68	6.68		Business purpose not documented
	8/15/1996	Foley's American Grill--Erlanger,KY	118.97	118.97		Business purpose not documented
	9/11/1996	Galt House--Louisville,KY	49.67		49.67	No documentation
	10/17/1996	NKU--Highland Heights,KY	139.00		139.00	No documentation
	10/17/1996	NKU--Highland Heights,KY	139.00		139.00	No documentation
	11/5/1996	All About Sports--Erlanger,KY	95.37		95.37	No documentation
	1/9/1997	Frame and Save--Erlanger,KY	127.38	127.38		Purpose not documented
	1/31/1997	Holiday Inn--Lexington,KY	139.47	139.47		Purpose of trip not documented
	4/1/1997	Hooters--Newport,KY	32.52		32.52	No documentation
	4/1/1997	Remington's Roadhouse--Newport,KY	79.43	79.43		Business purpose not documented
	4/16/1997	Holiday Inn--Lexington,KY	86.81		86.81	No documentation
	4/18/1997	Frame and Save--Erlanger,KY	61.36		61.36	No documentation
	5/5/1997	Hyatt Hotels--Lexington,KY	159.67		159.67	No documentation
	5/6/1997	Hyatt Hotels--Lexington,KY	10.95		10.95	No documentation
	5/7/1997	Outback Steakhouse--Crescent Springs,KY	89.29	89.29		Business purpose not documented
	6/13/1997	Hooters--Newport,KY	78.97		78.97	No documentation
	6/18/1997	Frame and Save--Erlanger,KY	162.05		162.05	No documentation
	6/20/1997	AJ Jolly Golf Course--Newport,KY	145.00		145.00	No documentation
	6/20/1997	Bob Evans--Crescent Springs,KY	51.99		51.99	No documentation
	7/15/1997	Outback Steakhouse--Crescent Springs,KY	70.00		70.00	No documentation
	7/22/1997	Twin Oaks Golf Course--Covington,KY	28.50		28.50	No documentation
	7/24/1997	Drawbridge Estate--Ft. Mitchell,KY	50.00		50.00	No documentation
	7/26/1997	Budget Rent-a-Car--Cincinnati,OH	90.62	90.62		Business purpose not documented Car only driven 19 miles
	7/26/1997	Budget Rent-a-Car--Cincinnati,OH	90.79	90.79		Business purpose not documented Car only driven 20 miles

Cardholder	Transaction Date	Vendor	Transaction Amount	Amount of Questionable Transaction Supported by Documentation	Amount of Questionable Transaction NOT Supported by Documentation	Comments
Former City Administrator	9/18/1997	Dudley's Restaurant--Lexington,KY	32.72		32.72	No documentation
(continued)	9/19/1997	Marriot Hotel/Griffin Gate--Lexington,KY	130.16		130.16	No documentation
	9/20/1997	Hyatt Hotels--Lexington,KY	253.16		253.16	No documentation
	9/20/1997	Hyatt Hotels--Lexington,KY	233.86		233.86	No documentation
	9/20/1997	Hyatt Hotels--Lexington,KY	25.00		25.00	No documentation
	9/21/1997	Hyatt Hotels--Lexington,KY	428.82	428.82		Purpose of trip not documented
	9/21/1997	Hyatt Hotels--Lexington,KY	401.80		401.80	No documentation
	10/1/1997	Hyatt Hotels--Lexington,KY	224.19		224.19	No documentation
	Dec-97	Outback Steakhouse--Crescent Springs,KY	300.00	300.00		Business purpose not documented
Police Chief	11/22/1996	Service Merchandise--Florence,KY	275.57		275.57	No documentation
	12/7/1996	Gatehouse Tavern--Ft. Mitchell,KY	2,767.00	2,767.00		Christmas Party
	4/23/1997	The Daisy Flowers Shop--Crescent Springs,KY	58.27	58.27		Flowers for Secretary
	5/13/1997	Holiday Inn--Richmond,KY	76.88		76.88	No documentation
	5/15/1997	Holiday Inn--Richmond,KY	57.03		57.03	No documentation
	10/14/1997	Halloween Express--Florence,KY	103.82		103.82	No documentation
	10/15/1997	Circuit City--Florence,KY	768.97		768.97	No documentation
	10/25/1997	McCalpin's--Crestview Hills,KY	377.33	377.33		Business purpose not documented
	10/25/1997	McCalpin's--Crestview Hills,KY	42.50	42.50		Business purpose not documented
	Feb-98	Best Western--Maysville,KY	279.99		279.99	No documentation
	2/28/1998	Best Western--Reynoldsburg,OH	73.59	73.59		Purpose of trip not documented
	Apr-98	Remington's Roadhouse--Newport,KY	118.09	118.09		Business purpose not documented
	7/13/1998	The Old Spaghetti Factory--Louisville,KY	25.57		25.57	No documentation
	7/18/1998	Galt House--Louisville,KY	381.62		381.62	No documentation
	7/21/1998	Galt House--Louisville,KY	11.22		11.22	No documentation
	7/25/1998	Stanley Steamer--Florence,KY	176.00	176.00		Clean carpet/furniture of K-9 officer
	10/2/1998	Holiday Inn--Richmond,KY	154.68		154.68	No documentation
	10/9/1998	Barren River State Resort Park--Lucas,KY	421.39		421.39	No documentation
	11/21/1998	Coit Services--Cincinnati,OH	343.60	343.60		Clean carpet/furniture of K-9 officer
	12/4/1998	Holiday Inn--Richmond,KY	250.15		250.15	No documentation
	4/22/1999	Rio's Steakhouse--Crescent Springs,KY	31.85		31.85	No documentation
	4/30/1999	Best Western--Maysville,KY	109.18		109.18	No documentation
	6/2/1999	Sav A Life--Nevada	336.00		336.00	No documentation
	6/9/1999	Best Western--Louisville,KY	175.29		175.29	No documentation
	6/11/1999	Holiday Inn--Louisville,KY	155.06		155.06	No documentation
	Sep-1999	Red Roof Inn--Richmond,KY	218.32		218.32	No documentation
	Oct-1999	Barren River State Resort Park--Lucas,KY	238.96		238.96	No documentation
City Clerk	9/21/1997	Hyatt Hotels--Lexington,KY	388.73		388.73	No documentation
	8/4/1998	Greyhound Restaurant--Ft. Mitchell,KY	106.72		106.72	No documentation
	10/29/1998	Outback Steakhouse--Crescent Springs,KY	225.00		225.00	No documentation
	Jan-99	French Quarter Inn--Maysville,KY	332.69	332.69		Purpose of trip not documented
	1/19/1999	American Blind Fact--Michigan	65.20		65.20	No documentation
	1/20/1999	American Blind Fact--Michigan	832.30		832.30	No documentation
	5/27/1999	JR's Executive Inn--Paducah,KY	396.84	396.84		Reservation charge

Cardholder	Transaction Date	Vendor	Transaction Amount	Amount of Questionable Transaction Supported by Documentation	Amount of Questionable Transaction NOT Supported by Documentation	Comments
City Clerk	7/24/1999	Radisson Hotels--Lexington,KY	115.48	115.48		Purpose of trip not documented
(continued)	10/9/1999	JR's Executive Inn--Paducah,KY	210.92	210.92		Purpose of trip not documented
	Sep-1999	Dillon's Steakhouse--Louisville,KY	20.98		20.98	No documentation
	Sep-1999	Holiday Inn--Louisville,KY	254.71		254.71	No documentation
	Oct-1999	Red Lobster--Paducah,KY	48.52		48.52	No documentation
	Oct-1999	Outback Steakhouse--Paducah,KY	55.00		55.00	No documentation
	Oct-1999	Cracker Barrel--Paducah,KY	36.18		36.18	No documentation
Current Mayor	1/15/1999	Pro City--Crescent Springs,KY	1,400.00		1,400.00	No documentation
	1/15/1999	Burbank's Real Bar-B-Que--Ft. Mitchell,KY	121.25		121.25	No documentation
	1/17/1999	Outback Steakhouse--Crescent Springs,KY	78.69		78.69	No documentation
	1/17/1999	French Quarter Inn--Maysville,KY	500.96	500.96		Purpose of trip not documented
	2/7/1999	Best Buy--Florence,KY	1,178.14		1,178.14	No documentation
	Mar-1999	O'Charleys--Florence,KY	106.70		106.70	No documentation
	Mar-1999	Drawbridge Select Membership--Ft. Mitchell,KY	200.00		200.00	No documentation
	Mar-1999	Drawbridge Food Services--Ft. Mitchell,KY	27.33		27.33	No documentation
	4/6/1999	Drawbridge Food Services--Ft. Mitchell,KY	26.72		26.72	No documentation
	4/7/1999	Drawbridge Estate--Ft. Mitchell,KY	149.00		149.00	No documentation
	12/18/1999	Tickets Sports Bar--Covington,KY	790.43	790.43		Christmas Party

*Totals*    \$ 44,159.48    \$                    18,979.99    \$                    25,179.49

**Tickmark Legend:**

- Receipt indicates the purchase of alcoholic beverages.

**Notes:**

- (1) Cardholders are listed more than once because different account numbers were used when new cards were issued to the cardholder.
- (2) Dual cardholders are listed for two cards because the receipts we examined indicated signatures of both individuals. We were unable to determine which individual was issued the card.

**EXHIBIT 2**

317 S.W.2d 499, Funk v. Milliken, (Ky. 1958)

\*499 317 S.W.2d 499

**Marshall FUNK, Warren County Attorney, etc., et al., Appellants,**

v.

**John M. MILLIKEN, Individually, et al., Appellees.**

Court of Appeals of Kentucky.  
June 13, 1958.

As Modified on Denial of Rehearing Nov. 28, 1958.

Action for declaratory judgment as to the amounts allowable as personal compensation and the amounts that properly could be credited against fees for office expenses and for compensation of deputies and assistants to county fee officers. The Circuit Court, Warren County, John B. Rodes, J., rendered judgment, and the plaintiffs appealed and some of the defendants cross-appealed. The Court of Appeals, Cullen, C., held, *inter alia*, that where same person held offices of circuit court clerk and master commissioner, net earning received as master commissioner in the amount of \$1,879.20 could not be retained in addition to the \$7,200 received as circuit court clerk in view of constitutional provision limiting compensation of public officers, with certain exceptions, to \$7,200.

Affirmed in part and reversed in part on direct appeal, and on the cross-appeals.

1. OFFICERS AND PUBLIC EMPLOYEES ⚡99  
283 ----  
283III Rights, Powers, Duties, and Liabilities  
283k93 Compensation and Fees  
283k99 Form and amount of compensation.  
Ky. 1958

Under constitutional provision that compensation of any public officer, other than those specifically named and those having state-wide jurisdiction, cannot exceed \$7,200, the limit applies to the person, regardless of the number of offices he may hold. Const. § 246.

2. CLERKS OF COURTS ⚡34  
79 ----  
79k10 Compensation and Fees of Clerks of State Courts  
79k34 Limitation of emoluments.  
Ky. 1958

Where same person held offices of circuit court clerk and master commissioner, net earnings received as master commissioner in the amount of \$1,879.20 could not be retained in addition to the \$7,200 received as circuit court clerk in view of constitutional provision limiting compensation of public officers, with certain

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exceptions, to \$7,200. Const. § 246; KRS 64.530, 64.620.

3. OFFICERS AND PUBLIC EMPLOYEES ⚡  
100(2)  
283 ----  
283III Rights, Powers, Duties, and Liabilities  
283k93 Compensation and Fees  
283k100 Increase or Reduction of Compensation  
283k100(2) Offices and positions within inhibitions.

Ky. 1958

Notwithstanding that 1949 amendment to Constitution and 1950 Salary Act authorized compensation up to \$7,200 per year to be fixed for local officers, where fiscal court, between June 30, 1950, the effective date of the Salary Act, and election of magistrates in 1953, did not exercise its authority to fix limits of compensation for magistrates, the old constitutional limit of \$5,000 still governed, in view of provision in Salary Act that until the appropriate public body exercises its authority under the act to fix compensation the compensation of certain officers shall not exceed the limits prior to the constitutional amendment. Const. § 246; KRS 64.480-64.760, 64.700.

4. OFFICERS AND PUBLIC EMPLOYEES ⚡  
100(2)  
283 ----  
283III Rights, Powers, Duties, and Liabilities  
283k93 Compensation and Fees  
283k100 Increase or Reduction of Compensation  
283k100(2) Offices and positions within inhibitions.

Ky. 1958

Where no maximum compensation for office of magistrate or constable had ever been fixed by the fiscal court and where the compensation limit for the preceding term was \$5,000, under the applicable statute the fiscal court could not reduce the compensation below \$5,000 for the term beginning in 1954. KRS 64.730.

5. DISTRICT AND PROSECUTING ATTORNEYS ⚡5(1)  
131 ----  
131k4 Compensation and Fees  
131k5 In General  
131k5(1) Fees and costs.

Ky. 1958

Under the statutes, if the county attorney, though not physically present, actually renders some service in the

317 S.W.2d 499, Funk v. Milliken, (Ky. 1958)

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particular case in quarterly court or magistrate's court, by some means of communication with the court, he is entitled to the fees, and the question of whether or not there has been written notice under statute from magistrate to county attorney stating time and place of trial and necessity of county attorney's presence is not material; if he does not render any service in the particular case, he is not entitled to the fees. KRS 64.410(2) (c), 69.260(1) (a-c), (2), 455.040.

## 6. COUNTIES ⌚80(1)

104 ----

104III Officers and Agents

104k76 Fees

104k80 Accounting

104k80(1) In general.

Ky. 1958

A county officer who is compensated wholly or in part from fees is required to pay over to the county, each year, the excess of receipts over and above the amounts allowable for his personal compensation, the compensation of his legally authorized deputies and assistants, and authorized official expenses.

## 7. COUNTIES ⌚73

104 ----

104III Officers and Agents

104k68 Compensation

104k73 Reimbursement of expenses.

Ky. 1958

Credit may be allowed county fee officer for expenses of his office that are reasonable in amount, beneficial to the public, and not predominantly personal to the officer in the sense that by common understanding and practice they are considered to be personal expenses. Const. § 106.

## 8. COUNTIES ⌚73

104 ----

104III Officers and Agents

104k68 Compensation

104k73 Reimbursement of expenses.

[See headnote text below]

## 8. COUNTIES ⌚80(1)

104 ----

104III Officers and Agents

104k76 Fees

104k80 Accounting

104k80(1) In general.

Ky. 1958

Under the statutes, the fiscal court may fix, in advance the categories of reasonable official expenses that will be allowed county fee officer and the

maximum amount that will be allowed for each category; in such case the officer must submit a detailed account of the expenses, with adequate supporting data, in order to obtain credit; it is not required that the fiscal court, limit the expenses in advance or approve each individual expenditure in advance; the officer should show the amount and purpose of each expenditure and that it is reasonable and that it is an allowable category and that the expense is official rather than personal in nature. Const. § 106; KRS 64.530, 64.710.

## 9. DISTRICT AND PROSECUTING ATTORNEYS

⌚5(3)

131 ----

131k4 Compensation and Fees

131k5 In General

131k5(3) Expenses.

Ky. 1958

County attorney's automobile expenses incurred in travel about the county in connection with negotiations for acquisition of highway right of ways and in locating and interviewing witnesses in civil and criminal cases are official and not personal expenses and are allowable against excess fees; however, such a claim should not be \*499 allowed without a showing of the purpose and official necessity of each trip and the distance traveled on each trip. Const. § 106; KRS 64.530, 64.710.

## 10. DISTRICT AND PROSECUTING ATTORNEYS

⌚5(3)

131 ----

131k4 Compensation and Fees

131k5 In General

131k5(3) Expenses.

Ky. 1958

Where office was not available for county attorney in the courthouse and he handled the county legal business from a private office rented by him, in which he also carried on a private law practice, and at least one-half of the business conducted in such office was county business, one-half of the cost of office rent for such office was properly allowable against county attorney's excess fees. Const. § 106; KRS 64.530, 64.710.

## 11. DISTRICT AND PROSECUTING ATTORNEYS

⌚5(3)

131 ----

131k4 Compensation and Fees

131k5 In General

131k5(3) Expenses.

Ky. 1958

Where county attorney paid dues to National

317 S.W.2d 499, Funk v. Milliken, (Ky. 1958)

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Association of County and Prosecuting Attorneys and incurred expenses in attending a state school for county attorneys and the annual state convention of county attorneys, such expenses were official and not personal and were allowable against excess fees.

12.DISTRICT AND PROSECUTING ATTORNEYS  
⌚5(3)

- 131 ----  
131k4 Compensation and Fees  
131k5 In General  
131k5(3) Expenses.

Ky. 1958

Where county attorney incurred travel expenses on a trip to Louisville in connection with a civil case in which the county was interested, this was an allowable item of expense against excess fees.

13.DECLARATORY JUDGMENT ⌚366

- 118A ----  
118AIII Proceedings  
118AIII(F) Hearing and Determination  
118Ak366 Questions and issues to be determined.

Ky. 1958

In action for declaratory judgment, a matter not in issue should not be adjudicated.

14.DISTRICT AND PROSECUTING ATTORNEYS  
⌚5(3)

- 131 ----  
131k4 Compensation and Fees  
131k5 In General  
131k5(3) Expenses.

Ky. 1958

County attorney's expenses for postage and stationery would be allowable against excess fees upon submission of suitable supporting data.

15.DISTRICT AND PROSECUTING ATTORNEYS  
⌚5(3)

- 131 ----  
131k4 Compensation and Fees  
131k5 In General  
131k5(3) Expenses.

Ky. 1958

County attorney's expenditure for textbook on Legal Medicine would be allowable against excess fees upon submission of satisfactory proof as to the necessity for the book for official purposes.

16.DISTRICT AND PROSECUTING ATTORNEYS  
⌚5(3)

- 131 ----  
131k4 Compensation and Fees

- 131k5 In General  
131k5(3) Expenses.  
Ky. 1958

The expense of substitute stenographer during necessary temporary absences of the regular stenographer was a proper official expense of the county attorney and was an allowable credit against excess fees. KRS 69.330.

17.SHERIFFS AND CONSTABLES ⌚76

- 353 ----  
353II Compensation  
353k76 Recovery of compensation paid.

Ky. 1958

Reasonable and necessary mileage expense of sheriff may be allowed as a credit against excess fees upon presentation of a properly itemized and documented claim; the sheriff should make an appropriate record of his travel in patrol work for which he is reimbursed out of the state treasury and an appropriate record of his mileage expenses in service of notices, subpoena and summons, for which he is paid by the litigants, and upon a showing of the purpose and necessity and distance traveled on other trips involving official service he will be allowed credit. KRS 64.095, 70.170

18.OFFICERS AND PUBLIC EMPLOYEES ⌚99

- 283 ----  
283III Rights, Powers, Duties, and Liabilities  
283k93 Compensation and Fees  
283k99 Form and amount of compensation.

Ky. 1958

Interest upon money borrowed by fee officer to meet current operating expenses is personal expense and not official expense and consequently is not allowable as a credit against excess fees.

19.PRISONS ⌚8

- 310 ----  
310k5 Officers  
310k8 Compensation for services.

Ky. 1958

Automobile expenses incurred by county jailer in delivering prisoners to the various courts and in assisting in apprehension of escaped prisoners are allowable as a credit against excess fees; and jailer's automobile expenses in securing food and other supplies for the jail are allowable upon a showing that such supplies could not have been obtained at the same price by telephone order and delivery by the supplier.

20.PRISONS ⌚8

- 310 ----  
310k5 Officers

317 S.W.2d 499, Funk v. Milliken, (Ky. 1958)

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310k8 Compensation for services.  
Ky. 1958

In absence of any explanation or justification of item designated merely as "miscellaneous expense," such item should not have been allowed as a credit against jailer's excess fees.

## 21. PRISONS ☞ 8

310 ----

310k5 Officers

310k8 Compensation for services.

Ky. 1958

The statute providing that jailer is entitled to a fee equal to the reasonable cost of dieting prisoners, not exceeding \$1.75 per day was intended to apply only in counties containing a city of the first class. KRS 64.150.

## 22. PRISONS ☞ 12

310 ----

310k12 Management in general.

Ky. 1958

When a jailer purchases food from himself for keeping and dieting prisoners, the expense should be treated as prima facie invalid; the burden then is upon the jailer to show convincingly that the price paid did not exceed the prevailing price from normal suppliers; records should be produced to show the date of each purchase, the product and quantity, and there should be satisfactory evidence concerning quality. KRS 64.150.

## 23. JUSTICES OF THE PEACE ☞ 17

231 ----

231II Rights, Duties, and Liabilities

231k14 Compensation and Fees

231k17 Accounting for and disposition of fees.

Ky. 1958

The county attorney had duty to defend action brought against magistrate by a person against whom a prosecution for a criminal offense was pending in the magistrate's court, to enjoin the prosecution on the ground that the magistrate had no jurisdiction, and in the absence of any showing that the county attorney had refused or was unable to so defend, the magistrate was not entitled to allowance of attorney fees as a credit against the magistrate's excess fees. KRS 69.210.

## 24. JUSTICES OF THE PEACE ☞ 17

231 ----

231III Rights, Duties, and Liabilities

231k14 Compensation and Fees

231k17 Accounting for and disposition of fees.

Ky. 1958

The expense of travel of magistrates for "emergency

trips" from their homes to the courthouse, during other than normal business hours, for the purpose of holding magistrate's court, was not allowable as a credit against magistrates' excess fees.

## 25. JUSTICES OF THE PEACE ☞ 17

231 ----

231II Rights, Duties, and Liabilities

231k14 Compensation and Fees

231k17 \*499 Accounting for and disposition of fees.

Formerly 231k7

Ky. 1958

Expenses of magistrate for telephone calls and for office supplies would be allowable as a credit against magistrate's excess fees if properly documented.

## 26. OFFICERS AND PUBLIC EMPLOYEES ☞ 47

283 ----

283I Appointment, Qualification, and Tenure

283I(E) Deputies and Assistants

283k47 In general.

[See headnote text below]

## 26. OFFICERS AND PUBLIC EMPLOYEES ☞ 96

283 ----

283III Rights, Powers, Duties, and Liabilities

283k93 Compensation and Fees

283k96 Deputies and assistants and their services.

Ky. 1958

Considering the 1950 Salary Act as a whole, the legislature intended that both the number and the compensation of deputies should be fixed by the fiscal court before the first Monday in May of the election year, and that if not so fixed the number and compensation would be limited to that of the preceding term. Const. § 246; KRS 64.480-64.760, 64.530.

## 27. OFFICERS AND PUBLIC EMPLOYEES ☞ 47

283 ----

283I Appointment, Qualification, and Tenure

283I(E) Deputies and Assistants

283k47 In general.

Ky. 1958

Where the statute merely makes provision for specified number of deputies, the fiscal court may allow additional deputies; where the statute actually places a restriction on the number of deputies, the fiscal court may not allow additional deputies.

## 28. OFFICERS AND PUBLIC EMPLOYEES ☞ 47

283 ----

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283I Appointment, Qualification, and Tenure  
 283I(E) Deputies and Assistants  
 283k47 In general.

Ky. 1958

The fiscal court has no authority to authorize a deputy or assistant for an officer unless there is statutory recognition of the right of the particular officer to have deputies or assistants. KRS 64.530, 64.550.

## 29. PRISONS ⚡ 8

310 ----

310k5 Officers

310k8 Compensation for services.

Ky. 1958

Compensation during the term commencing in 1954 for jailer's two male deputies in addition to the one deputy authorized by statute, and for a matron, would be allowable as a credit against jailer's excess fees upon a showing that the extra deputies and the matron had lawfully been authorized for the preceding term and the compensation so allowable would be the compensation paid for such preceding term. KRS 64.530, 64.730, 71.060.

## 30. PRISONS ⚡ 7

310 ----

310k5 Officers

310k7 Appointment, qualification, and tenure.

[See headnote text below]

## 30. PRISONS ⚡ 8

310 ----

310k5 Officers

310k8 Compensation for services.

Ky. 1958

In view of the 1956 amendment to the statute permitting jailer, with approval of county court, to appoint two additional deputies, the fiscal court no longer has authority to fix number of deputies for jailer under the statute permitting the fiscal court to fix number and compensation of deputies on or before the first Monday in May in the year of the election; however, the fiscal court still has the power to fix the compensation for all deputies of the jailer and for the matron and the compensation should be fixed on or before the first Monday in May of the election year. KRS 64.530, 71.060.

## 31. JUSTICES OF THE PEACE ⚡ 17

231 ----

231III Rights, Duties, and Liabilities

231k14 Compensation and Fees

231k17 Accounting for and disposition of fees.

Ky. 1958

The fiscal court had no authority to authorize office assistant for magistrate and magistrate could not claim a credit against his excess fees for the annual compensation paid his assistant.

## 32. DECLARATORY JUDGMENT ⚡ 366

118A ----

118AIII Proceedings

118AIII(F) Hearing and Determination

118Ak366 Questions and issues to be determined.

Ky. 1958

In action for declaratory judgment, the trial court properly refused to rule on the question whether certain excess fees of the sheriff should be paid to the county or to the county school district, where the county board of education was not a party to the suit.

## 33. CLERKS OF COURTS ⚡ 67

79 ----

79k64 Powers and Proceedings in General

79k67 Ministerial functions and acts.

Ky. 1958

The fiscal court has a duty to require the county court clerk to keep adequate records and accounts. KRS 61.290, 67.080(7).

\*503 Jo M. Ferguson, Atty. Gen., Edward L. Fossett, Asst. Atty. Gen., for appellant.

Aaron F. Overfelt, Bowling Green, for Marshall Funk, individually.

Henry J. Potter, Jr., Bowling Green, for Oval Motley.

Leland H. Logan, Bowling Green, for Carl Jordan.

August Winkenhofer, Jr., Bowling Green, for J. Scott Lowe.

Parker W. Duncan, Bowling Green, for A. L. Douglas.

G. D. Milliken, Jr., Bowling Green, for Raymond McClard.

Robert M. Coleman, Bowling Green, for S. C. Lawson.

Leland H. Logan, Bowling Green, for L. C. Stanley.

Charles W. Dobbins, Louisville, and Salem W. Moody, Richmond, as amicus curiae.

CULLEN, Commissioner.

This action was brought by the county attorney, county judge, county treasurer, and magistrates of Warren County, in their official capacities, against the persons who, in 1954, held the offices of county attorney, county judge, county court clerk, circuit court clerk and master commissioner, magistrates, jailer, sheriff, and constables. All of the offices occupied by the defendants were operated wholly or in part under the *fee* system. A declaratory judgment was sought upon a detailed list of questions that had arisen upon an audit of the accounts of the various defendants, for the year 1954, involving the amounts allowable as personal compensation, and the amounts that properly could be credited against fees for office expenses and for compensation of deputies and assistants. The circuit court entered a judgment making declarations on the questions raised. The plaintiffs have appealed, agreeing with some of the declarations and disagreeing with others, and they are represented on the appeal by the Attorney General. There also are \*504 cross-appeals by the defendants who held the offices of county attorney and jailer, and by one of the defendants who held the office of magistrate.

We will discuss the various questions under descriptive headings.

#### I. Personal Compensation

##### 1. Circuit Court Clerk and Master Commissioner

[1] [2] The same person held the offices of circuit court clerk and of master commissioner. Prior to his election as circuit court clerk, the fiscal court had entered an order under KRS 64.530 fixing his maximum compensation for that office at \$7,200 (the constitutional limit under Section 246 of the Constitution of Kentucky). For the year 1954 he had net earnings as circuit court clerk, after deducting office expenses and the compensation of his deputies, in the amount of \$7,590.44. This indicated an excess of \$390.44 to be paid over to the county. However, he also received net earnings as master commissioner of \$1,879.20. The question is whether he may retain this as compensation, in addition to the \$7,200 received as circuit court clerk. The lower court held that the two offices were completely separable, and that the compensation as master commissioner could be retained.

The judgment is clearly wrong on this point. Under Section 246 of the Constitution, the compensation of any public *officer*, other than those specifically named

in the section and those having statewide jurisdiction, cannot exceed \$7,200. The limit applies to the person, regardless of the number of offices he may hold. See *Coleman v. Hurst*, 226 Ky. 501, 11 S.W.2d 133; *City of Louisville v. Gorman*, 286 Ky. 477, 150 S.W.2d 931; *Barker v. Barnes, Ky.*, 248 S.W.2d 901. Furthermore, KRS 64.620 provides that the compensation of any local officer, 'for services rendered in one or more offices or positions of employment,' shall not exceed \$7,200. And KRS 64.530(1) provides that for the purposes of fixing compensation, master commissioners 'shall be deemed to be county officers.'

The judgment should require that all net earnings of the combined offices in excess of \$7,200 be paid over to the county as excess fees.

##### 2. Magistrates

[3] Two of the defendant magistrates, who held court, received net earnings for 1954, after deduction of allowable expenses, in excess of \$5,000. The question is whether the limit on their compensation was \$5,000, or \$7,200. The lower court held that the limit was \$5,000.

Under the 1949 amendment to Section 246 of the Constitution, and under the 1950 'Salary Act,' KRS 64.480 to 64.760, compensation up to \$7,200 per annum is *authorized* to be fixed for local officers. However, KRS 64.700 provides:

'Until such time as the public officer or body authorized by KRS 64.480 to 64.760 to fix the compensation or the limits of compensation of a public officer or employe exercises such authority with respect to such officer or employe, the compensation of such officer or employe shall not exceed that fixed under the statutory law in force and effect prior to June 30, 1950, or, in the case of any officer whose compensation was limited only by the Constitution and not by statute, shall not exceed the limit fixed by Section 246 of the Constitution prior to its amendment. \* \* \*'

At no time between June 30, 1950 (the effective date of the Salary Act) and the election of the defendant magistrates in 1953 did the fiscal court of Warren County exercise its authority to fix the limits of compensation for magistrates. Accordingly, the lower court was correct in holding that the old constitutional limit of \$5,000 still governed. See *Cheshire v. City of Frankfort, Ky.*, 272 S.W.2d 37. See also *Shamburger v. Duncan, Ky.*, 253 S.W.2d 388.

\*505 [4] The lower court included in its judgment a statement that since no maximum compensation for the office of magistrate had ever been fixed by the fiscal court, that body could *now* fix the compensation for the terms that began in 1954, not to exceed the limit of \$5,000. We think this ruling is incorrect. Under KRS 64.730, when the compensation has not been fixed by the first Monday in May in the year of election, the compensation is to be the same as for the preceding term. We think this means that the compensation can neither be increased nor reduced. Accordingly, since the compensation limit for the preceding term was \$5,000, the fiscal court cannot now reduce it below \$5,000 for the term that began in 1954. The former rule, as to the authority to fix a compensation after the term commences, when no compensation previously has been fixed, was changed by KRS 64.730. See Upton v. Whitley County, Ky., 256 S.W.2d 3.

### 3. Constables

The pleadings indicated that one of the defendant constables had received net earnings for 1954 in excess of \$5,000, and that a controversy existed as to whether the compensation for constables was \$5,000 or \$7,200 per annum. The lower court dismissed the action as to the constables, on the ground that no actual controversy existed. We think this was error.

The situation with respect to a compensation limit for the constables was exactly the same as it was for the magistrates, as above discussed, and the judgment should have made an adjudication the same as the one we have directed concerning the magistrates.

### 4. County Attorney

[5] A question is presented as to whether the county attorney is entitled to receive the percentage of fines and forfeitures prescribed by KRS 69.260(1)(a), and the taxed fee prescribed by KRS 69.260(2), in prosecutions in quarterly court or magistrates' court in which he does not appear nor participate. The lower court held that the percentage should be paid and the fee taxed except in instances where the county attorney 'fails to attend or to participate' in the prosecution after having received *written notice* to attend under KRS 455.040.

Subsection (1)(a) of KRS 69.260 provides that the county attorney shall receive 40 percent of 'all fines and forfeitures recovered in prosecutions before a county judge or magistrate.' Subsection (1)(b) allows him a percentage of the fines and forfeitures recovered in *circuit court* 'in those cases in which he is present

and assists in the prosecution,' and subsection (1)(c) allows him a percentage of the fines and forfeitures recovered in *police court* 'in those cases in which he is present and prosecutes.' Subsection (2) provides that when a fine or forfeiture recovered before a county judge or magistrate is less than \$25 the county attorney shall be allowed a fee of \$5 to be taxed as costs.

KRS 455.040 states that any magistrate before whom an arrested person is brought for trial shall give written notice to the county attorney of the time when and the place where the trial will be held, 'and that his presence is required.'

Subsection (2)(c) of KRS 64.410 prescribes that no officer shall demand or receive any fee for services not actually rendered.

On behalf of the county attorney it is argued that since subsections (1)(b) and (1)(c) of KRS 69.260 require actual presence and participation in circuit court or police court as a condition of receiving the fee, whereas subsection (1)(a) does not so require as to quarterly court or magistrate's court, presence and participation are not a condition of receiving the fee in the latter courts. It also is argued that the county attorney constantly is rendering service to the quarterly courts and magistrate's courts, through advice and consultation with the judges; that arrested persons often plead guilty because they know the county attorney can be available to \*506 prosecute them; and that there is no need for the county attorney to be present in cases where there is a plea of guilty.

The appellants maintain that the difference in wording between the various subsections of KRS 69.260, as concerns the requirement of presence and participation, is due to the fact that in circuit court that commonwealth's attorney normally is responsible for the prosecution, and in police court the city attorney has primary responsibility, so it was necessary for the statute to state specifically the circumstances in which the county attorney may receive a fee in those courts; but since the county attorney is the sole prosecuting officer for quarterly court and magistrate's court, there was no such necessity as to those courts. The appellants further point to the fact that under KRS 64.410(2)(c) an officer cannot receive a fee for services not actually rendered.

It is our opinion that the proper construction of the involved statutes should be that if the county attorney, though not physically present, actually renders some service in the particular case in quarterly court or magistrate's court, by some means of communication

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with the court, he is entitled to the fees, and the question of whether or not the written notice prescribed by KRS 455.040 has been given is not material. If he does not render any service in the particular case, he is not entitled to the fees. The judgment should have so declared.

## II. Allowable Expenses

### 1. General Considerations

[6] A county officer who is compensated wholly or in part from fees is required to pay over to the county, each year, the excess of receipts over and above the amounts allowable for his personal compensation, the compensation of his legally authorized deputies and assistants, and authorized official expenses. *Shipp v. Rodes*, 196 Ky. 523, 245 S.W. 157; *Holland v. Fayette County*, 240 Ky. 37, 41 S.W.2d 651; *Commonwealth v. Coleman*, 245 Ky. 673, 54 S.W.2d 42.

The questions that are presented in this case, concerning allowable *expenses*, relate to whether the officer may be allowed credit, against the fees received in excess of his maximum personal compensation and the compensation of his authorized deputies, for certain expenses, or whether those expenses must be borne by the officer out of his compensation allowance. There is no question of the county paying the expenses directly out of regular county revenues.

It will be apparent that if the officer is not allowed credit for certain expenses, they must come out of his compensation.

Approximately 35 years ago, the rule in this state seemed to be that a fee officer must personally bear all expenses of his office (other than for authorized deputies), except those which the fiscal court, by express or necessarily implied statutory authority, could have paid directly out of regular county revenues. In *Commonwealth v. Nunnelley*, 211 Ky. 409, 277 S.W. 506, decided in 1925, it was held that a sheriff could not be given credit, against excess fees, for automobile expense, stamps, stationery, books, post office box rent, and similar items of expense. However, he was allowed credit for telephone expense, because the statutes required the fiscal court to furnish an office for the sheriff, and the court considered a telephone to be a necessary appurtenance to such office.

[7] In more recent years, this Court has departed from the stringent limitations of the Nunnelley case, and has adopted the view that credit may be allowed

for expenses that are reasonable in amount, beneficial to the public, and not predominantly personal to the officer in the sense that by common understanding and practice they are considered to be personal expenses. See *Holland v. Fayette County*, 240 Ky. 37, 41 S.W.2d 651; *Commonwealth v. Coleman*, \*507 245 Ky. 673, 54 S.W.2d 42; *Goodlett v. Anderson County*, 267 Ky. 166, 101 S.W.2d 421. Support for this view is found in Section 106 of the Kentucky Constitution, which recognizes that 'necessary office expenses' are a proper charge against fees.

[8] The statutes now recognize that office expenses may be credited, because KRS 64.530 provides that the fiscal court has authority, as to a fee officer, to fix 'the maximum amount that the officer may expend each year for expenses of his office.' This does not mean a lump sum, blanket allowance, because KRS 64.710 prohibits such allowances except where expressly provided for by statute. See *Smith v. Campbell, Ky.*, 286 S.W.2d 532. We think it emans that the fiscal court may fix, *in advance*, the categories of reasonable official expenses that will be allowed and the maximum amount that will be allowed for each category. In such case, the officer still will be required to submit a detailed account of the expenses, with adequate supporting data, in order to obtain credit. It would be desirable for all fiscal courts to exercise the authority given by KRS 64.530, and limit the expenses in advance, or even require that each individual expenditure be approved in advance. However, it is our opinion that the statute does not require this to be done, and where it has not been done the officer yet may receive credit for proper expenses. But in order to receive credit he must not only show the amount and purpose of each expenditure, and that it is reasonable, but must establish that the expenditure is in an allowable category.

In determining whether an expense is in an allowable category, whether the determination is made in advance or when the officer makes his settlement at the end of each year, the fiscal court will be governed by the consideration of whether the expense is official rather than personal in nature. Any abuse of authority will of course be subject to judicial review.

With the foregoing principles in mind, we will undertake consideration of the particular items of expense here in question.

### 2. County Attorney

#### a. Automobile Expense

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[9] The county attorney claimed credit for automobile expenses for the year 1954, *estimated* at \$12 per month; incurred in travel about the county in connection with negotiations for acquisition of highway right of ways, and in locating and interviewing witnesses in civil and criminal cases. The lower court disallowed the claim, relying on *Commonwealth v. Nunnelley*, 211 Ky. 409, 277 S.W. 506. As hereinbefore pointed out, the strict rule expressed in the *Nunnelley* case no longer applies.

We think this kind of expense properly may be considered official rather than personal, and is of an allowable category. The lower court erred in holding that under no circumstances could such expense be allowed. However, the court was correct in rejecting the particular claim in question, because it was not properly supported. Because of the difficulty in drawing a clear line between official and personal use of an automobile, and in making a proper allocation of expenses, it is our opinion that a claim for automobile expense should not be allowed without a showing of the purpose and official necessity of each trip, and the distance traveled on each trip.

#### b. Office Rent

[10] The county attorney claimed credit for one-half of the cost of office rent for his law office. There was no office available for him in the courthouse, so he handled the county legal business from a private office rented by him, in which he also carried on a private law practice. The lower court disallowed this claim, on the ground there was no statutory duty or authority of the fiscal court to rent an office for the county attorney.

As indicated at the outset of this section of the opinion, it is our view that the allowance of credit for official expenses of \*508 a fee officer does not depend upon express statutory authority for the particular kind of expense. We think that the expense of maintaining an office for the carrying on of the legal business of the county is properly an official rather than a personal expense, and should be allowable on proof of reasonableness and necessity. Here the county did not make an office available in the courthouse, so there was a basis of necessity for the county attorney to rent one. As concerns reasonableness, it appears to be conceded that at least one-half of the business conducted in the county attorney's office was county business, and the amount of rent was reasonable.

It is our opinion that the claim for office rent should

have been allowed.

#### c. Expense of Membership in National Association of County Attorneys, and of Attending County Attorneys' School and Convention.

[11] The county attorney paid dues no the National Association of County and Prosecuting Attorneys, and incurred expenses in attending a state school for county attorneys and the annual state convention of county attorneys. His claim for credit for these items was disallowed by the lower court, on the theory that the expenses were personal rather than official in nature.

Under the decisions in *Reeves v. Talbott*, 289 Ky. 581, 159 S.W.2d 51, and *Louisville & Jefferson County Bd. of Health v. Steinfeld*, 308 Ky. 824, 215 S.W.2d 1011, these expenses may properly be considered as official and not personal. We think the county attorney was entitled to credit for these expenses.

#### d. Travel Expense in Connection with County Litigation

[12] [13] The county attorney sought credit for travel expenses incurred on a trip to Louisville in connection with a civil case in which the county was interested. The lower court held not only that this was an allowable item of expense, but could have been paid out of the county treasury. We think the court clearly was correct in holding the expense to be an allowable one, but the question of whether the fiscal court could have paid it directly out of the county treasury was not in issue and should not have been adjudicated. The latter adjudication should be omitted.

#### e. Postage and Stationery

[14] An issue was made by the pleadings as to a credit claimed by the county attorney for postage and stationery. The lower court made no adjudication on this issue. We think the claim should have been held allowable, upon submission of suitable supporting data.

#### f. Law Book

[15] An issue was made by the pleadings as to a credit claimed by the county attorney for the cost of a textbook on Legal Medicine. The lower court made no adjudication on this issue. The claim should have been held allowable, upon submission of satisfactory proof

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as to the necessity for the book for official purposes. Of course the book will be treated as official property.

#### g. Temporary Stenographic Work

[16] Another issue upon which the lower court made no adjudication concerns a claim by the county attorney of credit for the cost of temporary stenographic assistance during an illness and vacation period of the regular stenographer. Under KRS 69.330, a stenographer was furnished the county attorney at county expense. We think that the expense of a substitute during necessary temporary absences of the regular stenographer clearly constituted a proper official expense, and the judgment should have declared that the expense was an allowable credit.

### \*509 3. Sheriff

#### a. Automobile Mileage

[17] The sheriff claimed credit for automobile mileage for 1954 in the amount of \$1,680, computed on the basis of 2,000 miles per month at the rate of seven cents per mile. The lower court disallowed the claim, on the ground that if the mileage was for patrol work it was reimbursed by the state under KRS 70.170, and if it was for pursuit of criminals, making arrests, or collection of taxes it was not an allowable expense under the decision in Commonwealth v. Nunnolley, 211 Ky. 409, 277 S.W. 506.

Under KRS 70.170 the sheriff is allowed out of the *state treasury* an amount not to exceed \$1,500 per annum for mileage travelled in patrol work, computed at the rate of seven cents per mile. This is stated to be a reimbursement of expenses, and not compensation. However, for accounting purposes the sheriff should list the amount received as part of the receipts of his office, and he should make an appropriate record of the travel for which he was so reimbursed.

Under KRS 64.095 the sheriff is required to be paid, by the litigants, his mileage expense in the service of a notice, subpoena or summons, at the rate of seven cents per mile. Here again, he should list the amounts received, and itemize the travel involved.

We think the lower court correctly disallowed the particular claim in question, because, first, the claim was merely an estimate, without any indication of the purpose and necessity of each trip, and the distance traveled on each trip; and, second, because it could not be ascertained from the records of the sheriff whether the claim represented mileage for which he already had

been reimbursed under KRS 70.170 or 64.095. However, we think that the court erred in holding that the sheriff could in no event be allowed credit for necessary mileage in performing official services other than those for which he received reimbursement under KRS 70.170 or 64.095. It is our opinion, as hereinbefore expressed with reference to the county attorney, that reasonable and necessary mileage expenses may be allowed as a credit upon presentation of a properly itemized and documented claim.

#### b. Interest

[18] The sheriff claimed credit of \$200 for an item simply designated as 'interest.' The lower court disallowed this item, and we think properly so.

The appellants agree that the particular claim should have been disallowed, because no explanation or justification was submitted, but they contend that upon a proper showing, and particularly if the loan is approved in advance by the fiscal court, a fee officer should be allowed credit for interest upon money borrowed to meet current operating expenses. We think that to accept this contention would amount to giving the officer all of the benefits of the fee system, and none of the burdens. A fee officer obligates himself to run the office with the fees that he takes in. If there is a slack period during which the current fees are not enough to meet the current expenses, it is the officer's personal obligation to keep the office running. If he is required to borrow money, the interest is his own, personal expense, and not an official expense.

### 4. Jailer

#### a. Automobile Expense

[19] The jailer claimed credit for 'automobile expense' in the amount of \$704.91 (not itemized). The lower court disallowed the claim.

The jailer maintains that the expense was necessary in securing food, clothing, medicine and other supplies for the jail, in delivering prisoners to the various courts, and in assisting in the apprehension of escaped prisoners.

\*510 Our opinion on this question is the same as hereinbefore expressed with regard to the allowance of automobile expense for the county attorney. However, as concerns the use of an automobile in securing food and other supplies for the jail, we think the jailer has a special burden of showing that the supplies could not have been obtained at the same price upon telephone

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order and delivery by the supplier. This goes to the reasonableness and necessity of the claimed expense.

#### b. Miscellaneous Expense

[20] The jailer claimed credit for an item of \$12,81 as 'miscellaneous expense.' This was disallowed by the lower court, and properly so, there being no explanation or justification of the item.

#### c. Expense of Food Purchased by the Jailer from his own Farm

The jailer claimed credit for expenses for food in the amount of \$8,994.45. Objection was made to the allowance of this item because it appeared that a substantial amount of the food was purchased by the jailer from a farm owned by him individually. The lower court held that the expense was allowable, on the theory that so long as the food expense did not exceed the fees paid by the county for keeping and dieting the prisoners, it was immaterial where or at what price the food was purchased.

[21] Under KRS 64.150, prior to a 1954 amendment, the jailer was entitled to be paid out of the county treasury, for keeping and dieting prisoners confined for an offense other than a felony or contempt of court, the sum of \$1.25 per day for each prisoner. The 1954 amendment, effective in June 1954, raised the allowance to \$1.75 per day. (There is a provision in the statute, as amended, for an allowance of a fee 'equal to the reasonable cost of providing such services, not exceeding, per day . . . 1.75,' but it appears from an examination of the history of the statute that this provision was intended to apply only in counties containing a city of the first class.)

It is asserted in the pleadings that the actual fee paid by Warren County, in 1954, was 45 cents per day, and that the amount expended by the jailer for food did not exceed this amount.

We think the question is simply one of the reasonableness of the expenditures for food. Obviously, if the jailer purchases food from himself at an excessive price, he will receive a hidden profit at the expense of the county. Any difference between the fee paid for dieting the prisoners, and the reasonable cost of the food, constitutes *compensation* to the jailer. So, contrary to the opinion of the lower court, it does make a difference how much the jailer expends for food.

[22] It is our opinion that when a jailer purchases

food from himself, the expense should be treated as prima facie invalid. The burden then is upon the jailer to show convincingly that the price paid did not exceed the prevailing price from normal suppliers. Records should be produced to show the date of each purchase, the product and quantity, and there should also be satisfactory evidence concerning *quality*, which is an important controlling factor in the price of food.

The lower court erred in unconditionally allowing credit for the food expense. The expense should be held not allowable unless the reasonableness is proved in the manner above specified.

#### 5. Magistrates

##### a. Attorney Fees

[23] One of the magistrates claimed credit for \$300 attorney fees incurred in the defense of an action brought against him, by a person against whom a prosecution for a criminal offense was pending in the magistrate's court, to enjoin the prosecution on the ground that the magistrate had \*511 no jurisdiction. The lower court disallowed the claim, on the ground that it was the duty of the county attorney, under KRS 69.210, to have represented the magistrate in the litigation, and there was no showing that the county attorney had refused or was unable to do so. We think this adjudication was correct. Cf. Shannon v. Ray, 280 Ky. 31, 132 S.W.2d 545.

##### b. Expense of Travel from Home to Courthouse

[24] Two of the magistrate claimed credit for 'emergency trips' from their homes to the courthouse, during other than normal business hours, for the purpose of holding magistrate's court. The lower court disallowed the claims. This was correct, because in common understanding, both in the field of government and in private business, the expense of travel from home to office or place of employment is considered to be a personal expense.

##### c. Telephone and Office Supplies

[25] Two of the magistrates claimed credit for telephone expense, including long distance calls, and for office supplies. The lower court held that these claims were allowable. As to one of the magistrates, the claims were supported by checks, and we agree that these were allowable. However, the other magistrate claimed an *estimated* \$10 per month for office supplies, and a gross sum of \$82 for long distance telephone calls. Neither of these claims was

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supported by any documents or other data. In the absence of proper documentation they should not be allowed. The claim for long distance calls seems questionable on its face.

### III. Deputies and Assistants

#### 1. General Considerations

Questions concerning allowances for the compensation of deputies or assistants are presented as to two of the officers of Warren County. Basic problems involved are whether the fiscal court is required to fix *in advance* the number and compensation of deputies; whether the fiscal court can authorize additional deputies when a specific limitation on the number is fixed by statute; and whether the fiscal court can authorize a deputy or assistant for a particular officer when there is no express nor necessarily implied statutory authorization for such officer to have a deputy or assistant.

Section 246 of the Constitution of Kentucky limits the compensation of public officers, 'exclusive of the compensation of *legally authorized* deputies and assistants which shall be fixed and provided for by law' (our emphasis).

Prior to enactment of the 1950 Salary Act, KRS 64.480 to 64.760, it was held that the fiscal court had no authority to fix in advance the number and compensation of deputies of a county fee officer, but after the expenditures had been made could raise the question of their reasonableness by bringing an action to recover for the county the amount considered to be excessive. *Farris v. Nichols*, 286 Ky. 196, 150 S.W.2d 484.

[26] The 1950 Salary Act made a radical change in the law. KRS 64.530, a part of that Act, contains these significant provisions:

'\* \* \* the fiscal court of each county *shall fix* the compensation of every county officer and employe. For the purposes of this section, \* \* \* deputies or assistants of county officers shall be deemed to be county employes \* \* \*. In the case of officers compensated from fees, or partly from fees and partly by salary, the fiscal court shall fix the maximum compensation that the officer may receive, from both sources, and also *shall have authority to fix* the number of deputies and assistants, and the compensation thereof \* \* \*. In the case of county officers elected by popular vote, \* \* \* the annual compensation of the officer and \*512 of his

deputies and assistants *shall be fixed* by the fiscal court not later than the first Monday in May in the year in which such officers are elected, and shall not be changed during the term.' (Our emphasis.)

KRS 64.730 provides:

'Where any public body is required by KRS 64.480 to 64.760 to fix the compensation of an officer, and of his deputies and assistants, \* \* \* not later than the first Monday in May in the year in which such officers are elected, and the body fails to do so, the compensation of the officer, and of his deputies and assistants, shall be the same as for the preceding term.'

There is some ambiguity in KRS 64.530, in that in one place it provides that the fiscal court *shall fix* the compensation of deputies, and in another place requires that this be done not later than the first Monday in May in the election year, but in a third place states that the fiscal court *shall have the authority to fix* the number and compensation of deputies.

Considering the entire Act as a whole, we think the conclusion is inescapable that the legislature intended that both the number and the compensation of deputies be fixed by the fiscal court before the first Monday in May of the election year, and that if not so fixed the number and compensation will be limited by KRS 64.730 to that of the preceding term. In no other way can effect be given to the obvious purpose of the Act to prevent an increase in expenditures for deputy hire after election.

[27] As concerns the question of whether the fiscal court may, in fixing the number of deputies, allow a number in excess of that specified by a particular statute, we think the answer depends upon whether the statute merely makes provision for a specified number of deputies, or actually places a restriction on the number. In the former case the fiscal court may allow additional deputies; in the latter case it may not. This was substantially the holding in *Shamburger v. Tierney*, 314 Ky. 459, 236 S.W.2d 279.

[28] We also have the question of whether the fiscal court may authorize a deputy or assistant for an officer when there is no statutory authority, express or necessarily implied, for such officer to have a deputy or assistant. We think the answer to this question is found in KRS 64.550, which provides:

'Nothing in KRS 64.480 to 64.760 is intended to

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authorize the fiscal court of any county to create any office or make any employment not authorized by law.'

In view of the provisions of KRS 64.550, and the long established legislative policy in this state of authorizing deputies by specific statute when they are deemed necessary, it is our opinion that the fiscal court has no authority under KRS 64.530, or otherwise, to authorize a deputy or assistant for an officer unless there is statutory recognition of the right of the particular officer to have deputies or assistants.

In the light of the foregoing principles, we will consider the specific questions that are presented concerning deputies and assistants for the jailer and for the magistrates who hold court.

## 2. Jailer

[29] During the year 1954 the jailer of Warren County employed two male deputies and a matron. At that time KRS 71.060 provided that 'nay jailer may, with the approval of the *county court*, appoint one deputy' (our emphasis). However, as hereinbefore pointed out, KRS 64.530 provided that the *fiscal court* should fix the number and compensation of deputies and assistants of county fee officers. In his answer in this lawsuit, the jailer alleged that the two male deputies 'have been authorized' by the fiscal court and their compensation 'has been approved' by the fiscal court; that 'while no official order has been \*513 entered by the fiscal court authorizing the employment of a matron, the fiscal court recognizes the necessity for same and has tacitly approved of the employment of a matron,' and that the salary paid to the matron is reasonable.

The lower court held that the jailer could be given credit for the compensation paid to the deputies and matron.

A difficult question is presented. Under the principles hereinbefore discussed, we think the fiscal court would have had authority to allow the jailer deputies and assistants in addition to the one provided for in KRS 71.060; however, the fiscal court was required to fix the number and compensation on or before the first Monday in May in the year of election, which was 1953. See KRS 64.530. While the jailer's answer alleges that the two male deputies were 'authorized' and their compensation was 'approved' by the fiscal court, there is no allegation that his was done before the first Monday in May in 1953. This would seem to require a holding that the jailer was limited to

one deputy, and that deputy's compensation was limited to that paid for the preceding term. See KRS 64.730. However, if it should be made to appear that an extra deputy, and a matron, had lawfully been authorized for the preceding term, then these positions, with the compensation paid for such preceding term, would be allowable during the term that commenced in 1954, under KRS 64.730.

It is our opinion that compensation for the deputies and matron should not be allowed except upon the conditions and to the extent above indicated. Additional pleadings, and proof if necessary, should be permitted to develop the controlling facts.

[30] We call attention to the fact that KRS 71.060 was amended in 1956. Under the amendment, a jailer is entitled to two deputies, and a matron, and 'with the approval of the *county court*, may appoint additional deputies' (our emphasis). Since this statute now vests the power to authorize deputies in the *county court*, it is our opinion that the *fiscal court* no longer has authority under KRS 64.530 to fix the *number* of deputies for the jailer. However, it would seem that the fiscal court still has the power to fix the *compensation* for all deputies of the jailer, and for the matron, and that the compensation should be fixed on or before the first Monday in May in the election year. A question may arise as to whether the *county court* may authorize additional deputies after that date, but that question is not before us in this case and we will not attempt to answer it.

## 3. Magistrates

[31] Two of the magistrates, who held court, each employed an office assistant, and they claimed credit against excess fees for the annual compensation paid these assistants. The lower court held that the claims were allowable.

There is no express or necessarily implied statutory authority for the position of office assistant or clerk for a magistrate. For the reasons stated at the outset of this part of the opinion, we think that the fiscal court had no authority to authorize such positions, and that the claims are not allowable.

## IV. Miscellaneous

### 1. Excess Fees of Sheriff

[32] The lower court was asked to make an adjudication as to whether certain excess fees of the sheriff should be paid to the county or to the county

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school district. The court declined to do so, because the county board of education was not a party to the suit. We think the court properly refused to rule on the question in the absence of the board of education.

#### 2. County Clerk's Bookkeeping Methods

[33] A question was raised below concerning the methods of bookkeeping employed by the county court clerk. It appears \*514. that the clerk simply deposited all of his receipts in a special bank account, without keeping any detailed records of the sources or amounts of the receipts, and wrote checks for disbursements. The checks constituted the only record of disbursements. No issue is made as to the allowability of any of the disbursements; the only contention is that the clerk should be ordered to keep more satisfactory records and accounts. The lower court held that no actual controversy existed, and declined to make any

adjudication. However, the court pointed out that under KRS 67.080(7) and KRS 61.290 there are means by which proper accounts and records may be compelled to be kept.

Since no specific relief was sought with respect to the county clerk, it is difficult to see what particular benefit would be accomplished by a mere declaration that the clerk's records and accounts were inadequate. However, the clerk's methods of attempted bookkeeping deserve to be criticized severely, and we think it would be proper for the judgment to state that it is the duty of the fiscal court to require the clerk to keep adequate records and accounts.

To the extent that the judgment conforms with this opinion it is affirmed; in all other respects it is reversed, with directions to enter judgment in conformity with this opinion.

**EXHIBIT 3**

**City of Villa Hills**  
**Alcohol Purchases Identified on Receipts**

DATE	VENDOR	CHECK NO.	COMMENT	CHECK AMOUNT	CREDIT CARD	
					PURCHASE AMOUNT	ALCOHOL AMOUNT
<i>INVOICE PURCHASES:</i>						
11/30/1998	Ameristop	21802	Alcohol purchased	\$ 301.71		\$ 98.28
6/29/1998	Ameristop	21265	Alcohol purchased	295.56		45.44
7/31/1997	Ameristop	20286	Alcohol purchased	184.73		83.39
10/6/1997	Ameristop	20560	Alcohol purchased	145.37		79.80
			<b>Subtotal</b>	\$ 927.37		\$ 306.91
<i>CREDIT CARD PURCHASES:</i>						
8/15/1996	J&K One Stop		Alcohol purchased		\$ 12.77	9.18
8/15/1996	J&K One Stop		Alcohol purchased		6.68	4.59
12/7/1996	Gatehouse Tavern		Alcohol purchased		2,767.00	818.00
9/21/1997	Hyatt Hotels		Alcohol purchased		428.82	10.50
2/28/1998	Best Western		Alcohol purchased		73.59	15.25
Apr-1998	Remington's Roadhouse		Alcohol purchased		118.09	26.25
1/17/1999	French Quarter Inn		Alcohol purchased		500.96	15.00
			<b>Subtotal</b>		\$ 3,907.91	\$ 898.77
			<b>TOTAL</b>	\$ 927.37	\$ 3,907.91	\$ 1,205.68

**EXHIBIT 4**

**City of Villa Hills  
Alcohol Purchases Listed on  
the 1996 Christmas Party Receipt**

<b># OF DRINKS</b>	<b>DESCRIPTION</b>	<b>AMOUNT</b>
10	Budweiser	\$ 25.00
23	Bud Lt.	57.50
16	Feature wine glass	76.00
2	Bar gin	6.50
14	House glass	49.00
7	Miller Lt.	17.50
56	Bar beverage	84.00
4	Heineken	14.00
6	Oldenberg Nut Brown DR	13.50
5	Stone Creek Merlot glass	22.50
3	Oldenberg premium	7.50
1	Bar vodka & juice	7.00
11	Kalhua	104.50
7	Kalhua	35.00
1	Glenlivet	8.50
6	Glenlivet	25.50
3	Canadian Club	11.25
13	Jack Daniels	48.75
8	Bloody Mary	30.00
8	B & B w/up	40.00
7	Whiskey sour	26.25
4	White Russian	20.00
1	Bar amaretto	3.75
3	Bar amaretto	12.75
1	Apricot Brandy	4.25
1	Tom Collins	3.75
1	Amaretto sour	4.25
2	Manhattan	8.00
1	Martini, Bombay	4.25
1	Bar vodka & juice	3.75
1	Strawberry daquiri	4.50
4	Gran Marnier w/rocks	20.00
1	Baileys	5.00
1	Drambui	5.00
1	Oldenberg blonde	2.50
2	Whiskey sour	6.50
<i>Totals</i>	<b>236</b>	<b>\$ 818.00</b>

**EXHIBIT 5**

CITY OF VILLA HILLS • 719 ROGERS RD • VILLA HILLS, KY 41017 • (606) 341-1515 • FAX (606) 341-0012

*Amicstop Food Mart*

021265

6/29/98

101.15

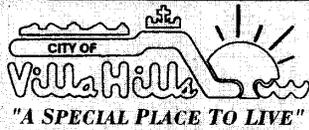
*Perkins/Range/Apple*

*Perkins/Range/Apple*

*Perkins/Range/Apple*

\$ 295.56

THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE SAFETY PAPER AND AN ARTIFICIAL WATERMARK APPEARS ON THE REVERSE SIDE



**CITY OF VILLA HILLS**  
719 ROGERS RD • VILLA HILLS, KY 41017  
(606) 341-1515 • FAX (606) 341-0012

021265

THE FIFTH THIRD BANK  
OF NORTHERN KENTUCKY  
COVINGTON BANKING CENTER  
535 MADISON AVE. COVINGTON, KY 41011  
73-23/421

*Two Hundred Ninety Five and 56/100*

PAY TO THE ORDER OF *Amicstop Food Mart*

DATE	CHECK NO.	AMOUNT
6/29/98	21265	295.56

TWO SIGNATURES REQUIRED

**NON NEGOTIABLE**

*Ann Kumer*

**AmeriStop**  **Food Mart 15845**  
**MERCHANDISE TRANSFER**

DATE 5-15-98

TO CITY OF VILLA HILLS  
DARKINS PARKY  
 FROM APM 2408L 2803 AMSTERDAM RD VILLA HILLS TX

Transferred By		Received By	Store Account	Office Account	
QUAN.		DESCRIPTION		PRICE	AMOUNT
6.8	0.21	BEER	3 BOLD LIGHT 1 COMB CT 2 MID L-1200 LITE	6.99	45.44
4.5	0.28	SOFT DRINKS		2.99	13.46
1	3	BOX CHIPS			7.00
1	4	BOX PRETZELS			5.00
	5				
	6				
	7				
	8				
	9				
	10				
	11				
	12				
	13				
				<b>TOTAL</b>	193.23
BE SURE TO ENTER THE COST PER ITEM, THEN EXTEND AND TOTAL THIS INVOICE					193.23

*Thank you!*  
*Paul*

**White Copy**—Store receiving merchandise should mail this copy to the office.  
**Yellow Copy**—Store selling merchandise should retain this copy until check or notice of payment has been received from the office.

02180

CITY OF VILLA HILLS • 719 ROGERS RD • VILLA HILLS, KY 41017 • (606) 341-1515 • FAX (606) 341-0012

DATE	INVOICE NUMBER	DESCRIPTION	INVOICE AMOUNT	VOUCHER AMOUNT
11/20/98	22600	COFFEE, BANDAIDS, MISC	15.43	
06/18/98	15857	FOOD - FISHING DERBY	36.56	
11/20/98	22598	FOOD - HAUNTED TRAIL	84.00	
11/20/98	22599	FOOD - HAUNTED TRAILS	165.70	

PLEASE DETACH BEFORE DEPOSITING

30



**CITY OF VILLA HILLS**  
 719 ROGERS RD • VILLA HILLS, KY 41017  
 (606) 341-1515 • FAX (606) 341-0012

021802

**THE FIFTH THIRD BANK**  
 OF NORTHERN KENTUCKY  
 COVINGTON BANKING CENTER  
 535 MADISON AVE. COVINGTON, KY 41011

73-23/421

DATE

CHECK NUMBER

VOID AFTER 90 DAYS AMOUNT

11/30/98

21802

\$\*\*\*\*\*301.71

THREE HUNDRED ONE AND 71/100 DOLLARS\*\*\*\*\*

**PAY**  
**TO THE**  
**ORDER OF**

AMERISTOP  
 2803 AMSTERDAM RD.  
 VILLA HILLS, KY 41017

**NON-NEGOTIABLE**

*[Handwritten Signature]*  
 \_\_\_\_\_

**Wendy's Food Mart**

**MERCHANDISE TRANSFER**

DATE 11-20-98

TO CITY OF VILLA HILLS  
KRUMFED TRAILS

FROM WENDY'S FOOD MART  
2803 AMSTERDAM ROAD VILLA HILLS TX 77077

Transferred By		Received By	Store Account	Office Account	
QUAN.		DESCRIPTION	PRICE	AMOUNT	
10-23	1	2CS BUD	1638	3276	
	2	2CS BUD LT	1638	3276	
	3	3 WILD BERRY	369	1107	
	4	1 BLACK COUNTRY	369	369	
	5	3 21" ICE	309	927	
<del>10-23</del>		100 POP	598	598	
	7	10-23 SUBTOTAL		9523	
10-24	8	2CS POP	598	1196	
	9	2CS BUD	1638	3276	
	10	3 LRG ICE	309	927	
	11	DELI ITEMS		1618	
	12	10-24 SUBTOTAL		7017	
	13				
4285.700			<b>TOTAL</b>	16570	

BE SURE TO ENTER THE COST PER ITEM, THEN EXTEND AND TOTAL THIS INVOICE

**White Copy**—Store receiving merchandise should mail this copy to the office.  
**Yellow Copy**—Store selling merchandise should retain this copy until check or notice of payment has been received from the office.

CITY OF VILLA HILLS • 719 ROGERS RD • VILLA HILLS, KY 41017 • (606) 341-1515 • FAX (606) 341-0012

UZU56U

10/30/97

Ameristop

101.28

Haunted Trail

\$ 122.04

101.24

lunch meet tray  
for meeting (xpl)

23.33

\$ 145.37

THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE SAFETY PAPER AND AN ARTIFICIAL WATERMARK APPEARS ON THE REVERSE SIDE



**CITY OF VILLA HILLS**  
719 ROGERS RD • VILLA HILLS, KY 41017  
(606) 341-1515 • FAX (606) 341-0012

020560

THE FIFTH THIRD BANK  
OF NORTHERN KENTUCKY  
COVINGTON BANKING CENTER  
535 MADISON AVE. COVINGTON, KY 41011 73-23/421

One Hundred Forty Five and 37/100

PAY  
TO THE  
ORDER OF

Ameristop

DATE	CHECK NO.	AMOUNT
10/6/97	20560	\$ 145.37

TWO SIGNATURES REQUIRED

**NON NEGOTIABLE**

Aue Kramer

**AmeriStop® Food Mart 17002**  
**MERCHANDISE TRANSFER**

TO City of Villa Hills DATE 10/2/97

FROM AFM 22082 Office  
2203 AMSTERDAM ROAD VILLA HILLS KY 41007

Transferred By		Received By		Store Account	Office Account
QUAN.	DESCRIPTION			PRICE	AMOUNT
	Adm. meeting RON				
8	2 liter coke products			99	792
2	3 bags ice			119	238
1	4 Box 100 tea bags				14109
	5 9-29-97 JEFF SMITH				509
1	6 5# flour 9-29-97				219
1	7 bag balloons				89
	8 JEFF, BUCK, RON, SCOTT 10-24-97 10-25-97				
9	9 2 PK BUSCH PRODUCTS			819	7371
1	10 12 PK BUSCH				609
4	11 COOLERS			369	1476
2	12 PLATES			149	298
1	13 NAPKIN			145	145
2	12 PK COKE			299	598
				<b>TOTAL</b>	

CODE 28  
 CODE 28  
 TRANSFER

BE SURE TO ENTER THE COST PER ITEM, THEN EXTEND AND TOTAL THIS INVOICE

White Copy—Store receiving merchandise should mail this copy to the office  
 Yellow Copy—Store selling merchandise should retain this copy until check or notice of payment has been received from the office.

CITY OF VILLA HILLS • 719 ROGERS RD • VILLA HILLS, KY 41017 • (606) 341-1515 • FAX (606) 341-0012

020286

*Ameristap Food Mart*

*7/31/97*

*101.35*

*150.35*

*Parade + Festival*

*101.28*

*34.38*

*Fishing Derby*

THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE SAFETY PAPER AND AN ARTIFICIAL WATERMARK APPEARS ON THE REVERSE SIDE



**CITY OF VILLA HILLS**  
719 ROGERS RD • VILLA HILLS, KY 41017  
(606) 341-1515 • FAX (606) 341-0012

"A SPECIAL PLACE TO LIVE"

**020286**

**THE FIFTH THIRD BANK**  
OF NORTHERN KENTUCKY  
COVINGTON BANKING CENTER  
535 MADISON AVE. COVINGTON, KY 41011

73-23/421

*One Hundred Eighty Four and 23/100*

PAY TO THE ORDER OF *Ameristap Food Mart*

DATE	CHECK NO.	AMOUNT
<i>7/31/97</i>	<i>20286</i>	<i>184.73</i>

TWO SIGNATURES REQUIRED

**NON NEGOTIABLE**

*Jane Kramer*

# AmeriStop® Food Mart 16981

## MERCHANDISE TRANSFER

TO CITY OF VILLA HILLS DATE 7-25-97

FROM AMERISTOP FOOD MART #29082  
2808 AMSTERDAM ROAD VILLA HILLS TX 41017

Transferred By		Received By	Store Account	Office Account	
QUAN.	DESCRIPTION			PRICE	AMOUNT
2101	Bud Light				2916
2113	cs Bud				3615
1	3	Coors Light			1778
6	4	bays ice		119	714
20	5	case Trautn spring water			N/C
	6				
	7				
	8				
	9				
	10				
6		Sandwiches @ 1.89			
	12				
	13				
<b>TOTAL</b>					

BE SURE TO ENTER THE COST PER UNIT WHEN EXTEND AND TOTAL THIS INVOICE

**White Copy**—Store receiving merchandise should retain this copy.  
**Yellow Copy**—Store selling merchandise should retain this copy until notice of payment has been received from the office.

90-53

150-35  
21-38

**EXHIBIT 6**



**EXHIBIT 7**

FIFTH THIRD BANK  
DEPT. 00781, CINCINNATI, OH 45263

VISA BUSINESS CARD

PAGE 1  
STATEMENT DATE SEPTEMBER 16, 1996  
ACCOUNT NUMBER

M  
CITY OF VILLA HILLS  
C/O DENNIS W STEIN  
719 ROGERS RD  
VILLA HILLS KY 41017

PAYMENT DUE DATE OCTOBER 15, 1996  
MINIMUM PAYMENT DUE 0.00  
PAST DUE AMOUNT 0.00  
NEW BALANCE 778.4868

CARD CENTER  
DEPT 360  
CINCINNATI, OH 45263-0360

00000000 00000000

ACCOUNT NUMBER	AVAILABLE CREDIT	CREDIT LIMIT	AMOUNT PAID	PAYMENT DUE	PAYMENT DUE DATE	DAYS IN CYCLE	BILLING DATE	AVERAGE DAILY BALANCE	
08/20	10,000	10,000	0.00	10/11/96	12	03/11/96	0.00	0.00	
09/11									
REFERENCE NUMBER 44381618161L 243826239506396100246 PAYMENT - THANK YOU BRAY007LOUISVILLE LOUISVILLE KY PLEASE DO NOT PAY AS OF THIS STATEMENT DATE YOUR ACCOUNT HAS A CREDIT BALANCE									
RATES FOR AVERAGE DAILY BALANCE ANNUAL PERCENTAGE RATES MONTHLY PERIODIC RATE		PREVIOUS BALANCE 0.00		PAYMENTS 1323.43		CREDITS 0.00		NEW PURCHASES CASH ADVANCES OTHER CHARGES 353.18	
		19.80 1.450						FINANCE CHARGE 0.00	
								NEW BALANCE 778.4868	

FOR QUESTIONS CONCERNING YOUR ACCOUNT, PLEASE CALL 513-570-5333 OR 1-800-973-3030. FOR BILLING INQUIRIES, PLEASE WRITE TO CUSTOMER SERVICE, 00781, 111 FORT WASHINGTON BLVD, CINCINNATI, OH 45263. TO REPORT A LOSS OF STOLEN CARD, PLEASE CALL 513-570-5442 OR 1-800-782-6279.

Your Fifth Third Business Card offers worldwide, toll-free assistance 24 hours a day, 365 days a year. Call 1-800-VISA-911 for travel assistance and emergency medical help. For a full list of Visa Business Card... it's everywhere you want to be!

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**EXHIBIT 8**



0000924

CITY OF VILLA HILLS  
C/O DENNIS M STEIN  
719 ROGERS RD  
VILLA HILLS KY 41017

CARD CENTER  
DEPT 360  
CINCINNATI, OH 45263-0360

VISA BUSINESS CARD

PAGE 1  
STATEMENT DATE OCTOBER 14, 1997  
ACCOUNT NUMBER

PAYMENT DUE DATE NOVEMBER 08, 1997  
MINIMUM PAYMENT DUE 12.00  
PAST DUE AMOUNT 0.00  
NEW BALANCE 504.72



AMOUNT ENCLOSED ► \$ \_\_\_\_\_

TO CHANGE YOUR ADDRESS, CHECK BLOCK AND COMPLETE INFORMATION ON REVERSE SIDE

ACCOUNT NUMBER	CREDIT LIMIT	AVAILABLE CREDIT	MINIMUM PAYMENT DUE	PAYMENT DUE DATE	DAYS IN CYCLE	BILLING DATE	AVERAGE DAILY BALANCE			
	10000	9495	12.00	11/08/97	32	10/14/97	PURCHASES	CASH ADVANCES		
							0.00	0.00		
DATE OF TRANSACTION	POSTING	REFERENCE NUMBER	CHARGES, PAYMENTS AND CREDITS			SINCE LAST STATEMENT	AMOUNT			
09/17	09/18	24445007261075755256678	COLUMBIA'S N LIMESTONE	LEXINGTON	KY		58.66			
09/18	09/19	24445007282075851213747	COLUMBIA'S N LIMESTONE	LEXINGTON	KY		214.82			
09/23	09/26	24046947268000001100028	DI JOHNS	COVINGTON	KY		24.57			
09/30	10/01	4445000201211	ANNUAL CHARGE	CINCINNATI	OH		38.00			
10/01	10/02	24435657274649004942749	BOWLING GREEN PLAZA HOTEL	BOWLING GREEN	KY		98.12			
10/09	10/10	24692167282000486788010	AOL*SERVICE 1097	800-827-8364	VA		19.95			
10/09	10/11	24445007284078184554252	BEHLE STREET CAFE	COVINGTON	KY		30.65			
10/07	10/14	4445999999999D	CREDIT BALANCE REFUND	CINCINNATI	OH		<u>1425.09</u>			
RATE SUMMARY		MONTHLY PERIODIC RATE	NOMINAL ANNUAL PERCENTAGE RATE	ANNUAL PERCENTAGE RATE	PREVIOUS BALANCE	PAYMENTS	CREDITS	NEW PURCHASES CASH ADVANCES OTHER CHARGES	FINANCE CHARGE	NEW BALANCE
		1.650	19.80	19.80	1405.14CR	0.00	0.00	1909.86	0.00	504.72

FIFTH THIRD BANK  
For questions concerning your account, please call 513-579-5353 or 1-800-972-3030. For billing inquiries, please write to Customer Service, Dept. 00781, 38 Fountain Square Plaza, Cincinnati, OH 45263. To report a lost or stolen card, please call 513-579-5642 or 1-800-782-0279.



October 15, 1997 through October 14, 1998 is the "Time to Cash In!" at Alamo Rent A Car, Shell Oil, Barnes & Noble, Sir Speedy Print Shops and Insight Direct. See next statement to find out how!



NOTE: See reverse side for Annual Membership Fee disclosure (if detailed above), additional disclosures and other important information. FINANCE CHARGES on purchases will be incurred using Method 1 (see reverse side).

**CITY OF VILLA HILLS RESPONSE**

# Memo

**To:** Kentucky State Auditor

**From:** Mayor Steve Clark

**Date:** 12/22/00

**Re:** Reply to Audit Draft

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- 1- I would like to thank you for your work on the audit requested by the City of Villa Hills. I understand that this is an overview and not a complete in-depth investigation.
- 2- As Mayor, I plan to put your recommendations in place as quickly as time permits. We will take all necessary steps possible to insure that the situations covered do not occur again. I have wanted to investigate and correct some of these issues since becoming Mayor.
- 3- Your professional and prompt help with the requested audit is greatly appreciated by the City. Please pass on my thanks to all of your staff who helped and your superiors.
- 4- If I can be of any assistance in the future, please feel free to contact me.