



CRIT LUALLEN
AUDITOR OF PUBLIC ACCOUNTS

October 22, 2004

AUDITOR'S ALERT
ATTENTION: COUNTY ATTORNEYS

The Auditor's Office, in the form of an Auditor's Alert, periodically offers guidance and recommendations to public officials regarding fiscal matters, accountability, and best practices. Accordingly, the Auditor's Office advises county attorneys that:

Delinquent property tax add-on fees should be spent under the court decision of Funk V. Milliken. The expenditures should be:

- **Necessary;**
- **Reasonable in amount;**
- **Beneficial to the public; and**
- **Not predominantly personal in nature.**

Due to the findings from recent examinations of financial activity within certain county attorneys' offices, Auditor of Public Accounts Crit Luallen alerts county attorneys of the appropriate use of add-on fees received for the collection of delinquent property taxes. Examinations conducted by this office provided an opportunity for us to initiate contact with the Office of the Attorney General, County Attorneys Association, and Prosecutors Advisory Council (PAC) staff to recommend the adoption of generally accepted standards that clearly define the use of add-on fees received for the collection of delinquent property taxes. Efforts to adopt these standards as regulations are in process.

The Finance and Administration Cabinet, Department of Revenue (Revenue) is responsible for the collection of certificates of delinquency and delinquent personal property tax bills as stated in Kentucky Revised Statute (KRS) 134.500. However, Revenue shall first offer the opportunity to collect delinquent taxes to a county attorney.

A county attorney desiring to collect the delinquent property taxes can then enter into an annual contract with Revenue. KRS 134.500 sets forth the duties of a county attorney for collecting delinquent property taxes and the fees a county attorney can charge for collecting delinquent taxes.

KRS 134.545 states, "moneys paid to the county attorney under KRS 132.350, 134.340, 134.400, 134.500, 134.540, and 135.040 shall be used only for payment of county attorney office operating expenses." An opinion of the Attorney General, OAG 94-64, states, "the legislature has not defined the phrase 'operating expenses' as used in KRS 134.545." However, OAG 94-64 and OAG 85-17 both reference the court decision of Funk v. Milliken, Ky., 317 S.W. 2d 499 (1958).



In Funk v. Milliken, the Court found that expenditures of county officials should be necessary, reasonable in amount, beneficial to the public, and not predominantly personal in nature. OAG 85-17 further states, “[i]t is our opinion that such monies paid to a county attorney for collection of delinquent taxes may be spent for any official expense of the county attorney’s office arising out of the proper conduct of that office, including both his criminal and civil duties. The term ‘proper conduct of office’ includes activities or services which are **practical necessities** in conducting that office.” [Emphasis added]

Recommendation: *We recommend that expenditures using add-on fees from the collection of delinquent property taxes be used only for the payment of county attorney office operating expenses. In addition, these operating expenses paid from add-on fees should be in accordance with Funk v. Milliken, which found expenditures of county officials should be necessary, reasonable in amount, beneficial, and not predominantly personal in nature.*