



ADAM H. EDELEN
AUDITOR OF PUBLIC ACCOUNTS

February 25, 2013

Honorable David L. Harrington
Calloway County Attorney
905 Sycamore Street
Murray, KY 42071

Dear Mr. Harrington:

The Auditor of Public Accounts (APA) has completed an examination of the office of the Calloway County Attorney (CCA). Our office received concerns related to specific activities and transactions that could indicate possible mismanagement leading to misuse of public funds. This letter summarizes the procedures performed and communicates the results of those procedures.

The APA reviewed certain activities for two calendar years - calendar year ending December 31, 2009 and calendar year ending December 31, 2011. The procedures performed include reviewing receipt and expenditure transactions, payroll, and general policies and procedures of the CCA. In addition, our review consisted of interviews with various staff and management at the CCA as well as some former staff and other Calloway County officials.

The purpose of this review was not to provide an opinion on financial statements or activities, but to ensure appropriate processes are in place to provide strong oversight of financial activity and to review specific issues brought to our attention. Also, it should be noted that weaknesses identified during the examination may have occurred in other calendar years not selected for testing.

Detailed findings and recommendations are attached to this letter to assist all parties involved in improving procedures and internal controls. Overall, these findings indicate the Calloway County Attorney should implement additional internal control procedures to ensure that public funds are not only safeguarded, but also to comply with state law and to avoid the appearance of impropriety. In addition to the findings, the CCA's management responses to the findings are included.

If you have any questions, contact Libby Carlin, Assistant Auditor of Public Accounts.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam H. Edelen".

Adam H. Edelen
Auditor of Public Accounts



CALLOWAY COUNTY ATTORNEY
FINDINGS AND RECOMMENDATIONS

CALLOWAY COUNTY ATTORNEY FINDINGS AND RECOMMENDATIONS

2012-01: Bonuses Should Not Be Paid To Employees

While reviewing cancelled checks for disbursements, we noted it was customary for the Calloway County Attorney's Office to pay bonuses or incentives to its employees, without a formal incentive program in place. Throughout calendar year 2009, employees were awarded \$18,400 in bonuses and incentive payments. Throughout calendar year 2011, employees were awarded \$3,180 in bonuses and incentive payments.

According to OAG 83-432, such bonuses are prohibited by Ky. Const. Sec. 3. Therefore, in the future, we recommend the County Attorney eliminate the payment of such bonuses and incentives.

County Attorney's Response and Corrective Action Plan:

The County Attorney understood employee bonuses for work performed could be paid from information obtained from the Kentucky Retirement System, an accounting firm, and the Kentucky County Attorney Association. It should be noted that the employee paid by the county continued to receive annual wage increase while the employees paid through child support and the state received no increases in 2010, 2011, and 2012. In addition, child support employees were paid less than the county and state employees and the county employee was paid less than the state employee. The payments were to make up in part for that discrepancy. The County Attorney will comply with the recommendation that in the future the payment of bonuses and incentives be eliminated.

2012-02: Donations Should Not Be Made From Office Funds

While reviewing cancelled checks for disbursements, we noted the Calloway County Attorney frequently made donations and charitable contributions to various organizations within the community from office funds as well as other gifts of sympathy. Based on our review of cancelled checks for calendar years 2009 and 2011, we noted donations and charitable contributions totaling \$2,583 and \$1,327 respectively.

According to Funk v. Milliken, 317 S.W.2d 499 (Ky. 1958) Kentucky's highest court reaffirmed the rule that fee officials' expenditures of public funds will only be allowable if the following criteria are met:

- The expenditure is necessary
- The expenditure is adequately documented
- The expenditure is reasonable in amount
- The expenditure is beneficial to the public
- The expenditure is not personal in nature.

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FINDINGS AND RECOMMENDATIONS
(Continued)**

2012-02: Donations Should Not Be Made From Office Funds (Continued)

Given the fact that donations and charitable contributions, as well as other gifts of sympathy, do not meet all of the criteria above, we recommend the County Attorney eliminate the payment of such from the funds of the Calloway County Attorney's Office.

County Attorney's Response and Corrective Action Plan:

Through conversations and guidelines supplied by the Kentucky County Attorney Association, the County Attorney believed the office could donate funds to organizations that benefit the public. Donations were given to promote health, safety, family, community, drug/alcohol/smoking education, physical activity and youth organizations. These were considered practical and necessary in the fight against domestic violence; for the well being of dependent and neglected children; and the enhancement of a safe, healthy community. Donations were made for the public good and were not personal to the County Attorney. The County Attorney will comply with the recommendation that the payment of such be eliminated.

2012-03: Employees May Not Receive Contract Labor Payments

While reviewing cancelled checks for disbursements, we noted compensation paid to two employees for performing duties that were considered outside the scope of their employment. Also, because it was considered outside of the scope of their employment, this compensation was reported on a 1099 tax form rather than the employee's W-2.

According to federal tax law, individuals may not serve the same entity as both an employee and contract labor. Therefore, all compensation and wages should be reported on employees' W-2 forms. Any compensation paid to individuals that do not qualify as employees should be reported on a 1099 if it exceeds \$600.

Therefore, we recommend the County Attorney comply with federal tax law by eliminating contract labor payments to employees. We further recommend that all compensation paid to employees be reported on his or her W-2.

County Attorney's Response and Corrective Action Plan:

The County Attorney will comply with the recommendations by eliminating contract labor payments to employees who perform work outside the scope of their employment and by reporting all compensation and wages on employee W-2 forms.

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2012-04: All Expenditures Should Have Proper Supporting Documentation

While reviewing cancelled checks for disbursements for calendar years 2009 and 2011, we noted three expenditures totaling \$470 that did not have proper supporting documentation such as an invoice, receipt, etc. According to *Funk v. Milliken*, 317 S.W.2d 499 (Ky. 1958), in order to be allowable, expenditures should be sufficiently documented. Therefore, in the future, we recommend the County Attorney maintain proper supporting documentation on all expenditures.

County Attorney's Response and Corrective Action Plan:

A concerted effort has always been made to obtain receipts for payments made. However, there were three expenditures that did not have proper receipts. One, a receipt from Kroger's for food and items for the community's Play Day in the Park, was located prior to the exit conference. The other two were such that a cancelled check would have normally acted as a receipt: a donation to the Girl Scouts and a payment to an employee. The County Attorney will comply with the recommendation that in the future all expenditures have supporting documentation.

2012-05: Payroll Withholdings Should Be Calculated Properly

While reviewing annual earnings records for office employees, we noted withholding amounts for retirement and FICA were not always calculated correctly. Given the importance of these calculations and withholdings, we recommend the correct calculations be made and turned over to the corresponding authority. If necessary, the bookkeeper or payroll officer should seek the necessary training needed in order to provide a better understanding of the payroll system. As an alternative, the bookkeeper or payroll officer may consult with the Calloway County Treasurer for assistance.

County Attorney's Response and Corrective Action Plan:

The County Attorney had an accounting firm to set up payroll and calculations. Since that time, payroll updates have been downloaded regularly. The accounting firm and/or county treasurer are asked should questions arise. The incorrect calculation of FICA had to do with not deducting retirement before FICA. The error was brought to the County Attorney's attention in 2012 and was immediately corrected. The improper calculation of retirement related to bonuses paid in 2011. Contact has been made with the appropriate reporting agency. The County attorney was instructed to include the adjustment in the January 2013 monthly report with a posting date of November 2011. Payment will be made at that time.

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(Continued)**

2012-06: Nepotism Within The Calloway County Attorney's Office

While conducting examination procedures, we noted a certain level of nepotism within the Calloway County Attorney's Office. Examination of payroll records, inquiry, and observation revealed that the County Attorney's wife and daughter, as well as other family members, currently hold employment within the office. While hiring relatives is not specifically prohibited by statute; it does pose risks to the office due to matters of public perception and because often relatives are less closely supervised than other employees. Because of this, we recommend the County Attorney consult with the Calloway County Ethics Board to determine if such a condition is in violation of the County's ethics code.

County Attorney's Response and Corrective Action Plan:

The county policy concerning nepotism state that those employed with a familial relationship should be qualified and not treated any differently than other employees. The family members that work for the County Attorney are qualified and experienced, all possessing bachelor or master degrees, all having either owned or managed a business in the past and all having worked with the public before being hired in the positions they now hold. All such employees were treated in the same manner and were not paid more than others in the same position. The County Attorney recognizes the "perception" that might be created by hiring family members and will continue to abide by the county policy.

County Attorney's Additional Response:

The County Attorney does wish to express his appreciation for the courtesy shown to him by the audit staff and for the insights they have given.

The County Attorney accepts full responsibility for the actions depicted herein and has taken the necessary steps to follow the recommendations as set forth.