



Auditor of Public Accounts  
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FOR IMMEDIATE RELEASE

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### **Harmon Releases Audit of Former Breathitt County Sheriff's Fee Account**

**FRANKFORT, Ky.** – State Auditor Mike Harmon today released the audit of the 2017 financial statement of former Breathitt County Sheriff Ray Clemons. State law requires the auditor to annually audit the accounts of each county sheriff. In compliance with this law, the auditor issues two sheriff's reports each year: one reporting on the audit of the sheriff's tax account, and the other reporting on the audit of the fee account used to operate the office.

Auditing standards require the auditor's letter to communicate whether the financial statement presents fairly the receipts, disbursements and excess fees of the former Breathitt County Sheriff in accordance with accounting principles generally accepted in the United States of America. The former sheriff's financial statement did not follow this format.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America, the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, and the *Audit Guide for County Fee Officials* issued by the Auditor of Public Accounts, Commonwealth of Kentucky. Because of the matters described in the Basis for Disclaimer of Opinion paragraph; however, we were not able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion.

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

The audit contains the following comments:

**The former sheriff's fourth quarter report did not include all receivables and liabilities:** The former sheriff's fourth quarter report did not include receivables in the amount of \$29,255 and \$40,272 of liabilities that occurred subsequent to December 31, 2017, that should have been properly reflected on the fourth quarter report. The former sheriff did not have proper controls in

place or adequate oversight to ensure all financial transactions and activity were reported on the year-end quarterly financial statement. Failure to properly report these items results in an incomplete and inaccurate fourth quarter report. According to the Department for Local Government's (DLG) *County Budget Preparation and State Local Finance Officer Policy Manual*, all receivables and liabilities must be reported and included in the cumulative financial activity. There is a column on the report for these items. We recommend the former sheriff ensure that all financial activity is included and reported completely and accurately on the fourth quarter report.

*Former Sheriff's Response: Redo the 4<sup>th</sup> Quarter.*

**The former sheriff's office lacked adequate segregation of duties over receipts and bank reconciliations:** This is a repeat finding and was reported the prior year audit report as Finding 2016-010. The sheriff's office lacked adequate segregation of duties. The responsibilities of recording, depositing, and reconciling cash were delegated to the same individual. The former sheriff was aware of the risk associated with inadequate segregation of duties. However, due to a small staff size and budget constraints, the former sheriff decided to accept these risks and did not implement compensating controls to offset this weakness. Since only one person performed all financial functions, there is no assurance that financial transactions were accurate, complete, and free of error/misstatement. The functions of receiving, recording, depositing, and reconciling cash should be separated whenever possible in order to decrease the risk of undetected errors, misstatements, or fraud. If, due to a small staff size, duties could not be adequately segregated, the former sheriff could have implemented and documented compensating controls to reduce the risk of inadequate segregation of duties. Examples of compensating controls include: the former sheriff comparing daily checkout sheet to receipts ledger and bank deposit, reviewing bank reconciliations for accuracy, performing surprise cash counts, reviewing invoices prior to payment, and reviewing all financial reports. The former sheriff could have documented his review process by initialing reports and supporting documentation. We recommend the sheriff's office segregate the duties of receiving, recording, depositing, and reconciling cash or implement and document compensating controls to offset this control issue.

*Former Sheriff's Response: This will be corrected.*

**The former sheriff's 2015 fee account has a deficit of \$7,608:** This is a repeat finding and was reported the prior year audit report as Finding 2016-003. The former sheriff's 2015 fee account had a deficit totaling \$36,426. The former sheriff paid the 2016 fee account for the state advancement in the amount of \$5,080 and the state advancement balance of \$38,954 to the Kentucky State Treasurer, but in order to settle the 2015 fee account, the former sheriff needs to pay election board payments in the amount of \$1,650 and a disallowed disbursement (Meritorious Award) in the amount of \$5,958. The former sheriff was aware of the receivables and liabilities associated with the 2015 fee account. Due to lack of oversight and failure to take corrective action, the amounts to collect from the former sheriff per the 2015 fee audit remain unpaid in the amount of \$7,608. There are liabilities that still exist in the 2015 fee account, and the former sheriff is personally liable for paying them.

The former sheriff is also in violation of statutes related to election board payments and salary maximums for calendar year 2015. Failure to settle accounts timely increases the risk that

misappropriation of assets or fraud will occur. KRS 134.192(1) requires the sheriff to settle his accounts annually with the county, no later than September 1 of each year. KRS 134.192(11) requires a complete statement of funds received by and expenditures made from his office. KRS 134.192(12) requires the sheriff to pay the governing body of the county excess fees at the time the annual settlement is filed. We recommend the former sheriff deposit personal funds of \$7,608 to cover the 2015 fee account deficit, disallowed expenditures, and election board payments not deposited.

*Former Sheriff's Response: I had no idea of this.*

**The former sheriff has not settled his 2016 fee account:** This is a repeat finding and was reported the prior year audit report as Finding 2016-002. The former sheriff had disallowed disbursements totaling \$3,065 in his 2016 fee account. The former sheriff did not have adequate controls in place to ensure all disbursements were allowable. Finally, the former sheriff failed to deposit election board payments totaling \$5,450 into his 2016 fee account. The former sheriff was unaware the election board payments were not his personally. The former sheriff will need to collect the following in order to settle his 2016 fee account.

Collect from former sheriff:

- Disallowed expenditures \$3,065
- Election board payments \$5,450

Total amount to collect \$8,515

There are uncollected receivables that still exist in the 2016 fee account, and the former sheriff is personally liable for collecting them. The former sheriff is also in violation of statutes related to timely settlement of accounts, election board payments, and salary maximums. KRS 134.192(1) requires the sheriff to settle his accounts annually with the county, no later than September 1 of each year. KRS 134.192(11) requires a complete statement of funds received by and expenditures made from his office. KRS 134.192(12) requires the sheriff to pay the governing body of the county excess fees at the time the annual settlement is filed. Additionally, KRS 64.820 requires the fiscal court to collect any amount due the county from the county officials as determined by the audit and to turn the matter over to the county attorney if the amount due cannot be collected without lawsuit. We recommend the former sheriff deposit personal funds of \$8,515 into the 2016 fee account, which, along with the current balance in the account of \$57, should be turned over to the fiscal court as excess fees for calendar year 2016.

*Former Sheriff's Response: This will be taken care of.*

**The former sheriff has not settled his 2009 fee account:** This is a repeat finding and was reported the prior year audit report as Finding 2016-007. In the prior year audit, it was noted that the former sheriff had \$4,375 of disallowed disbursements in his 2009 fee account. The former sheriff wrote a check in the amount of \$4,375 to a county employee's mother for an accident involving a volunteer deputy, perpetrator, and her vehicle. Since the perpetrator did not have personal vehicle insurance, the former sheriff paid the owner the NADA book value of the totaled vehicle. This

was not a necessary expense in the operation of the sheriff's office and was disallowed. The former sheriff did not have adequate controls in place to ensure all disbursements were necessary, adequately documented, reasonable in amount, beneficial to the public, and not personal in nature. The former sheriff paid expenses in direct violation of those outlined as allowable for fee officials. This disallowed disbursement remains unpaid. In Funk v. Milliken, 317 S.W.2d 499 (Ky. 1958), Kentucky's highest court reaffirmed the rule that county fee officials' expenditures of public funds will be allowable only if they are necessary, adequately documented, reasonable in amount, beneficial to the public, and not personal in nature. In addition, KRS 64.820(1) states, "[t]he fiscal court shall collect any amount due the county from county officials as determined by the audit of the official conducted pursuant to KRS 43.070 and 64.810 if the amount can be collected without suit." KRS 64.820(2) states, "[i]n the event the fiscal court cannot collect the amount due the county from the county official without suit, the fiscal court shall then direct the county attorney to institute suit for the collection of the amount reported by the Auditor or certified public accountant to be due the county within (90) days from the date of receiving the Auditor's or certified public accountant's report." We recommend the former sheriff turn over personal funds of \$4,375 to the fiscal court for repayment of the disallowed disbursement to settle his 2009 fee account. We will refer this finding to the Breathitt County Attorney.

*Former Sheriff's Response: I will turn over \$4,375 to fiscal court.*

**The former sheriff has not settled his 2012 fee account:** This is a repeat finding and was reported the prior year audit report as Finding 2016-008. In the prior year audit, it was noted that the former sheriff had \$339 in disallowed disbursements. The former sheriff paid for items that were not allowable because they are not considered necessary or beneficial to the public: \$25 in donations and \$314 in books purchased for students. The former sheriff did not have adequate controls in place to ensure all disbursements were necessary, adequately documented, reasonable in amount, beneficial to the public, and not personal in nature. The former sheriff paid expenses in direct violation of those outlined as allowable for fee officials. These disallowed disbursements remain unpaid. In Funk v. Milliken, 317 S.W.2d 499 (Ky. 1958), Kentucky's highest court reaffirmed the rule that county fee officials' expenditures of public funds will be allowable only if they are necessary, adequately documented, reasonable in amount, beneficial to the public, and not personal in nature. In addition, KRS 64.820(1) states, "[t]he fiscal court shall collect any amount due the county from county officials as determined by the audit of the official conducted pursuant to KRS 43.070 and 64.810 if the amount can be collected without suit." KRS 64.820(2) states, "[i]n the event the fiscal court cannot collect the amount due the county from the county official without suit, the fiscal court shall then direct the county attorney to institute suit for the collection of the amount reported by the Auditor or certified public accountant to be due the county within (90) days from the date of receiving the Auditor's or certified public accountant's report." We recommend the former sheriff turn over personal funds of \$339 to the fiscal court for repayment of the disallowed disbursement and settle his 2012 fee account. We will refer this finding to the Breathitt County Attorney.

*Former Sheriff's Response: Under the impression it was paid.*

**Auditor's Reply:** There was no evidence provided to the auditor that this had been paid through the date of the report.

**The former sheriff has not paid back \$3,065 in disallowed disbursements to his 2016 fee account:** This is a repeat finding and was reported the prior year audit report as Finding 2016-001. The former sheriff has \$3,065 in disallowed disbursements for calendar year 2016. The first disallowed disbursement was \$1,500 for the purchase of two computers and an air conditioning unit. Auditors previously contacted the vendor listed on the invoice, but the vendor had no such transaction or invoice on file. It appears the invoice was created by office staff to falsify documentation to support the disbursement. Auditors also noted the cancelled check for this transaction had been altered in the former sheriff's files. The cancelled check on file at the bank listed a different payee than the former sheriff's files. Due to the discrepancies noted, we were unable to determine the validity of this transaction. As of January 19, 2018, this disallowed disbursement was reimbursed to the 2016 fee account and has been removed from the above amount. The second disallowed disbursement totaled \$200 for preparing tax bills. No supporting documentation for this disbursement could be located. The third disallowed disbursement totaled \$2,865 for computer repairs. The invoice was dated for 2017 but paid out of the 2016 fee account. Also, the computer that was repaired could not be located and no one has any knowledge of its existence.

The lack of oversight by the former sheriff allowed the bookkeeper to purchase items without proper supporting documentation. The former sheriff was aware that his office lacked adequate segregation of duties; however, he did not implement compensating controls to address the risk associated with inadequate segregation of duties or perform sufficient supervisory review to prevent or detect errors, misstatements, and fraud. Due to lack of proper support and weak internal controls, taxpayer funds have been used for purposes that are not allowable and these amounts must be personally paid back by the former sheriff. In Funk v. Milliken, 317 S.W.2d 499 (Ky. 1958), Kentucky's highest court reaffirmed the rule that county fee officials' disbursements of public funds will be allowable only if they are necessary, adequately documented, reasonable in amount, beneficial to the public, and not personal in nature. In addition, KRS 64.820(1) states, "[t]he fiscal court shall collect any amount due the county from county officials as determined by the audit of the official conducted pursuant to KRS 43.070 and 64.810 if the amount can be collected without suit. KRS 64.820(2) states, "[i]n the event the fiscal court cannot collect the amount due the county from the county official without suit, the fiscal court shall then direct the county attorney to institute suit for the collection of the amount reported by the Auditor or certified public accountant to be due the county within (90) days from the date of receiving the Auditor's or certified public accountant's report." We recommend the former sheriff reimburse the 2016 fee account the remaining \$3,065 for disallowed disbursements. This amount should then be turned over to the fiscal court as excess fees for calendar year 2016 (also see finding 2017-004).

*Former Sheriff's Response: I was not aware of this.*

Auditor's Reply: As noted in the finding, this matter was reported in the sheriff's 2016 Fee Audit as Finding 2016-001.

**The former sheriff has not paid back \$5,982 in disallowed disbursements to his 2015 fee account:** This is a repeat finding and was reported the prior year report as Finding 2016-005. The former sheriff paid \$5,982 as a meritorious award to one employee during prior calendar year

2015. This was not an allowable disbursement of the fee account. The administrative code stipulates that the sheriff must have excess fees available for the meritorious award to be paid. Since the former sheriff did not pay back his 2015 state advancement, he was in a deficit for calendar year 2015 and no excess fees were available for the meritorious award. The former sheriff was in violation of the administrative code and spent taxpayer funds on incentive payments that are not allowed by statute. This amount must personally be paid back to the 2015 fee account from the former sheriff. In 2015, the sheriff's administrative code stated "[m]eritorious award shall be allotted to the tax clerk when "excess" funds are available. (Not to exceed 10% gross)." However, there is no statutory authorization allowing a fee officer to independently regulate incentive awards to fee officers' employees. A clerk or sheriff cannot create, on their own and without being in the county's personnel system, an incentive award or incentive payments for their deputies. We recommend the former sheriff personally reimburse the 2015 fee account \$5,982 paid erroneously as a meritorious award.

*Former Sheriff's Response: I had the understanding this was paid.*

Auditor's Reply: There was no evidence provided to the auditor that this had been paid through the date of the report.

**The former sheriff has \$600 in disallowed disbursements in his 2017 fee account:** The former sheriff had six carwash transactions in the amount of \$600 in disallowed disbursements for calendar year 2017. No supporting documentation for the disbursements could be located. A lack of oversight by the former sheriff allowed purchases without proper supporting documentation. The former sheriff was aware that his office lacked adequate segregation of duties; however, he did not implement compensating controls to address the risk associated with inadequate segregation of duties or perform sufficient supervisory review to prevent or detect errors, misstatements, and fraud. Due to lack of proper support and weak internal controls, taxpayer funds have been used for purposes that are not allowable and these amounts must be personally paid back by the former sheriff. In Funk v. Milliken, 317 S.W.2d 499 (Ky. 1958), Kentucky's highest court reaffirmed the rule that county fee officials' disbursements of public funds will be allowable only if they are necessary, adequately documented, reasonable in amount, beneficial to the public, and not personal in nature. In addition, KRS 64.820(1) states, "[t]he fiscal court shall collect any amount due the county from county officials as determined by the audit of the official conducted pursuant to KRS 43.070 and 64.810 if the amount can be collected without suit." KRS 64.820(2) states, "[i]n the event the fiscal court cannot collect the amount due the county from the county official without suit, the fiscal court shall then direct the county attorney to institute suit for the collection of the amount reported by the Auditor or certified public accountant to be due the county within (90) days from the date of receiving the Auditor's or certified public accountant's report." We recommend the former sheriff reimburse the 2017 fee \$600 for disallowed disbursements. This amount should then be turned over to the fiscal court as excess fees for calendar year 2017.

*Former Sheriff's Response: [Vendor] provided receipts for services rendered and received a 1099 for these services.*

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

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

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