



Auditor of Public Accounts  
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### **Harmon Releases Audit of Elliott County Clerk's Fee Account**

**FRANKFORT, Ky.** – State Auditor Mike Harmon today released the audit of the 2019 financial statement of Elliott County Clerk Jennifer Carter. State law requires the auditor to conduct annual audits of county clerks and sheriffs.

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

Finding 1 of the audit report will be referred to the Office of the Attorney General (OAG), Kentucky Department of Revenue, and the Department for Local Government (DLG).

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 county clerk is not fulfilling her duties as an elected county official:** This is a repeat finding and was included in the prior year audit report as Finding 2018-001. The county clerk is not fulfilling her duties as an elected county official. The county clerk is not meeting these requirements and other statutory requirements. We have noted the following findings, which are detailed in the subsequent findings:

- The county clerk's office lacks adequate segregation of duties and internal controls over fee receipts and disbursements
- The county clerk did not comply with the county's fee pooling ordinance
- The county clerk did not submit quarterly reports to the Department for Local Government (DLG)
- The county clerk did not present an annual settlement to the fiscal court
- The county clerk did not pay delinquent taxes to districts timely
- The county clerk did not remit affordable housing payments to the state timely
- The county clerk did not remit legal process tax payments to the state timely
- The county clerk did not properly account for usage tax collections
- The county clerk owes ad valorem taxes to taxing districts in the amount of \$106,115
- The county clerk did not pay license fees timely and owes \$7,331 to the state
- The county clerk did not prepare all franchise tax bills
- The county clerk has not settled the 2017 fee account
- The county clerk has not settled the 2018 Fee Account

The county clerk does not devote sufficient time to financial reporting and has not implemented policies and procedures to ensure all financial activity is compiled and reported timely. Additionally, the county clerk has failed to implement policies and procedures to ensure taxes are distributed to taxing districts timely. The county clerk is in violation of many statutes that govern fee office operations. Most importantly, taxing districts (state, county, school, library, health department, extension district, conservation, etc.) are owed substantial amounts of taxes and have been deprived of these resources for a significant time.

KRS 68.210 gives the state local finance officer authority to prescribe a uniform system of accounts, which sets certain minimum accounting requirements for local officials. It is the statutory duty of the county clerk to collect and distribute motor vehicle taxes, delinquent taxes, and various taxes/fees on legal instruments. There are numerous statutes that outline the duties and responsibilities of the county clerk. Please refer to each individual finding for specific information related to that topic.

We recommend the county clerk take immediate action to remedy the issues outlined in these comments and recommendations. Further, we recommend the county clerk implement policies and procedures for her office to ensure these issues are corrected for future periods. This matter will be referred to the Office of the Attorney General (OAG), Kentucky Department of Revenue, , and the Department for Local Government (DLG).

*County Clerk's Response: With our limited ability to hire help we face a near impossible task of keeping all departments reporting and payments current.*

**The county clerk's office lacks adequate segregation of duties and internal controls over fee receipts and disbursements:** This is a repeat finding and was included in the prior year audit report as Finding 2018-002. The county clerk prepares daily deposits, prepares and signs checks, and collects cash from customers. The bookkeeper posts to the receipts and disbursements ledger, reconciles bank accounts, and prepares quarterly reports. The county clerk indicated that this condition is a result of a limited budget, which restricts the number of employees the county clerk

can hire or delegate duties to. Inadequate segregation of duties allows for one person to have a significant role in processing and recording receipts and disbursements, which would increase the risk that undetected misappropriations of assets and inaccurate financial reporting will occur. Internal controls and proper segregation of duties protects employees and the county clerk in the normal course of performing their daily responsibilities. Good internal controls dictate the same employee should not receive payments, prepare deposits and post to the receipts ledger; the same employee should not prepare monthly reports, sign checks and post to the disbursements ledger; and the same employee should not deposit funds, sign checks, post to ledgers and prepare bank reconciliations and monthly reports.

We recommend the county clerk’s office adequately segregate duties and implement internal controls to ensure transactions are recorded timely. Employees receiving payments and preparing deposits should not be posting to the receipts ledger and preparing bank reconciliations. A proper segregation of duties may not be possible with a limited number of employees, and in that case, the county clerk or bookkeeper could take on the responsibility of reviewing the daily deposits, receipts and disbursements ledgers, monthly reports, and bank reconciliations prepared by another employee. These reviews must be documented in a way that indicates what was reviewed, by whom, and when, because signing off on inaccurate information does not provide internal control. Further, the county clerk could require dual signatures on all checks, with one signature being the county clerk’s.

*County Clerk’s Response: We plan on having a deputy clerk review receipts and disbursements. Currently our office is only allotted \$60,000 total for deputies salaries annually.*

**The county clerk did not comply with the county’s fee pooling ordinance:** This is a repeat finding and was included in the prior year audit report as Finding 2018-003. As depicted in the following chart, the county clerk did not remit her monthly excess fees timely to fiscal court per the fee-pooling ordinance:

Excess Fee Month	Date Check Written	Days Late
January	2/15/2019	5
February	3/17/2019	7
March	4/16/2019	6
April	5/14/2019	4
May	6/11/2019	1
June	7/14/2019	4
July	8/22/2019	12
August	9/17/2019	7
September	10/15/2019	5
October	12/19/2019	39
November	12/19/2019	9
December	1/21/2020	11

According to the county clerk, she wanted to ensure she was remitting the correct amount of excess fees which delayed payment timeliness. Also, the clerk does not have adequate controls to ensure that that excess fees are paid timely in accordance with the county fee pooling ordinance. By not submitting the monthly excess fees to the fiscal court by the tenth of each month as required by Elliott County Fiscal Court Ordinance FY-13-001, the county clerk is not in compliance with the

ordinance. In addition, the fiscal court is deprived of these funds for a significant amount of time potentially impacting their budget.

On February 4, 2013, Elliott County Fiscal Court passed Ordinance FY-13-001, which requires the sheriff's office and county clerk's office to participate in fee pooling. Under fee pooling, the sheriff's office and county clerk's office pay net income (excess fees) monthly to the fiscal court, and fiscal court pays all salaries and expenses of those offices. Net income is due no later than the tenth of the month for the preceding month.

We recommend the county clerk comply with the county's fee pooling ordinance by paying excess fees based on calculations from the county clerk's financial records no later than the tenth of the month for the preceding month and implement controls to ensure that excess fees are paid timely.

*County Clerk's Response: We are much improved in remitting payments more timely than the previous years, and will continue to strive to meet the deadlines.*

**The county clerk did not submit quarterly reports to the Department for Local Government:** The county clerk did not submit quarterly reports to the Department for Local Government (DLG). As of the audit date, the county clerk still has not submitted a fourth quarter report for the 2019 fee account. In addition, a fourth quarter report was not completed until it was requested by the auditor at the start of the audit.

The county clerk does not have controls in place to ensure that quarterly reports are completed timely and submitted to DLG.

Failure to submit required reports prevents proper oversight from DLG and increases the risk that errors, misstatements, or fraud can occur and go undetected for a significant time period.

KRS 68.210 gives the state local finance officer the authority to prescribe a uniform system of accounts. This system of accounts requires that fee official quarterly financial report should be submitted by the 30th day following the close of each quarter.

We recommend the county clerk implement controls to ensure her quarterly reports are completed and submitted to DLG timely.

*County Clerk's Response: Steps are being taken with different accounting practices which will help with our reporting to DLG.*

**The county clerk did not present an annual settlement to the fiscal court:** The county clerk did not prepare or present an annual settlement of excess fees to the fiscal court. The county clerk does not have controls in place to ensure that an annual settlement is prepared and presented to the fiscal court. The lack of compliance with applicable state laws and reporting requirements has led to the fiscal court not being adequately informed of the financial activities of the county clerk's office, resulting in the limited ability to appropriately monitor the financial activity and make fully informed financial decisions for the county.

KRS 64.152(1) states, in part, “. . . the county clerk shall provide to the fiscal court by March 15 of each year a complete statement for the preceding calendar year of all funds received by his office in an official capacity or for official services, and of all expenditures of his office[.]”

We recommend the county clerk implement controls to ensure compliance with KRS 64.152 by presenting an annual settlement to the fiscal court by March 15.

*County Clerk's Response: This was overlooked, we plan on requesting to be added to the agenda to present the final settlement 2019.*

**The county clerk did not pay delinquent taxes to districts timely:** This is a repeat finding and was included in the prior year audit report as Finding 2018-004. The county clerk did not pay delinquent tax payments to districts timely. Delinquent tax payments for September through October 2019 were paid in January and March 2020, up to five months late. The county clerk does not have controls in place in order to make sure delinquent tax payments are made timely. By not remitting payments timely to taxing districts, cash flow problems can occur for these taxing districts as they rely on tax collections to fund a significant portion of their budgeted services.

KRS 134.126(3) requires the county clerk to, “report by the tenth day of each month to the department, the county treasurer, the sheriff, and the proper officials of the taxing districts.”

We recommend the county clerk implement controls to ensure monthly delinquent tax payments are paid by the tenth of each month in accordance with KRS 134.126(3).

*County Clerk's Response: We improved on district payments however fell short of the deadlines. We will continue to strive for more timely payments.*

**The county clerk did not remit affordable housing payments to the state timely:** This is a repeat finding and was included in the prior year audit report as Finding 2018-005. The county clerk remitted her first quarter affordable housing payments timely but did not submit the remaining three quarters timely. The clerk remitted the second, third and fourth quarter payments on January 22, 2020.

The county clerk does not have proper internal controls implemented to ensure that timely payments are made for affordable housing. As a result, the county clerk did not remit timely payments for affordable housing to the state. The county clerk is supposed to file a report with the Department of Revenue (DOR) on or before the tenth day of the month following the quarter covered by the report, and attach payment for the total amount computed due.

We recommend the clerk pay the amount due to DOR without delay. We also recommend the county clerk implement internal controls to ensure that affordable housing fees are paid timely.

*County Clerk's Response: Again, we are much improved with remitting payments and will continue to strive to meet the required deadline.*

**The county clerk did not remit legal process tax payments to the state timely:** This is a similar issue from the prior year and was included in the prior year audit report as Finding 2018-006. The county clerk did not remit payments for legal process taxes for 11 months during calendar year 2019 in a timely manner. The following chart shows each month and the date the amount was remitted.

<u>Month</u>	<u>Amounts Paid</u>	<u>Date Due</u>	<u>Date Remitted</u>
January	\$ 408	2/10/2019	2/12/2019
February	254	3/10/2019	1/22/2020
March	347	4/10/2019	4/2/2019
April	474	5/10/2019	1/22/2020
May	381	6/10/2019	1/22/2020
June	439	7/10/2019	1/22/2020
July	435	8/10/2019	1/22/2020
August	616	9/10/2019	1/22/2020
September	370	10/10/2019	1/22/2020
October	547	11/10/2019	1/22/2020
November	392	12/10/2019	1/22/2020
December	458	1/10/2020	1/22/2020
	<u>\$ 5,121</u>		

These taxes are collected on legal process and instruments received by the county clerk such as marriage licenses, power of attorney, mortgage, financing statements, deeds, etc. The county clerk does not have controls in place to ensure that payments are made to the state for legal process tax in a timely manner. As a result, the county clerk did not remit legal process tax timely to the state.

KRS 142.010(3) states, “[t]axes imposed under this section shall be reported and paid to the Department of Revenue by each county clerk within ten (10) days following the end of the calendar month in which instruments subject to tax are filed or marriage licenses issued. Each remittance shall be accompanied by a summary report on a form prescribed by the department.”

We recommend the county clerk implement controls to ensure that legal process tax payments are made to the state timely.

*County Clerk’s Response: We continue to strive to meet all the deadlines, and continue to experience inadequate funding for deputy clerks. I work very hard along with my staff, we will continue to find solutions for progress.*

**The county clerk did not properly account for usage tax collections:** This is a similar issue from the prior year and was included in the prior year audit report as Finding 2018-007. The Elliott County Clerk did not properly account for usage tax collections. For calendar year 2019, the county clerk owed usage tax to the Department of Revenue (DOR) in the amount of \$122,392. On March 30, 2021, the usage tax account transferred \$133,737 to DOR leaving an unknown balance of \$11,345 in the account. The county clerk did not properly deposit usage tax collections daily and transfer amounts to the state depository as required. Deposits to the usage tax account were

random, grouped together, or not made at all. Usage tax was not transferred to DOR timely. Payments were up to thirteen months late or not made at all. Also, weekly usage tax reports were not properly maintained. The county clerk was missing weeks 1-11 and 29-31. In addition, the clerk has not paid over \$16,452 of usage tax to the state to resolve the amounts owed for calendar year 2018.

The county clerk did not have procedures in place to ensure the correct amount of usage tax was remitted from the fee account to the usage tax account daily and properly transferred to the state timely. In addition, the county clerk was not reconciling her usage tax account monthly.

As a result of not properly remitting usage tax from the fee account to the usage tax account, the county clerk runs the risk of overpaying excess fees to the county and not having the funds to remit to DOR. The clerk also runs the risk of incurring penalties that are prohibited from being paid from the fee account. In addition, by not properly reconciling the usage tax account it was overdrawn three times during the year resulting in \$59 in overdraft fees.

KRS 131.155(2)(c) requires the county clerk to, “deposit motor vehicle usage tax and sales and use tax collections in the clerk’s local depository account not later than the next business day following receipt. The clerk shall cause the funds to be electronically transferred from the clerk’s local depository account to the State Treasury in the manner and at the time prescribed by the department[.]” KRS 138.464(4) states, “[f]ailure to deposit or, if required, transfer collections as required above shall subject the clerk to a penalty of two and one-half percent (2.5%) of the amount not deposited or, if required, not transferred for each day until the collections are deposited or transferred as required above. The penalty for failure to deposit or transfer money collected shall not be less than fifty dollars (\$50) nor more than five hundred dollars (\$500) per day.”

We recommend the county clerk ensure the correct amount of usage tax is deposited from the fee account to the usage tax account daily and transferred to the DOR timely. The easiest way to do this would be to perform monthly bank reconciliations of the usage tax account. In addition, the clerk should remit \$16,452 to the state for amounts owed and reported in calendar year 2018.

*County Clerk’s Response: We are implementing changes in USAGE reporting and payments. We don’t have adequate staff hardly for day to day business.*

**The county clerk owes ad valorem taxes to taxing districts in the amount of \$106,115:** This is a repeat finding and was included in the prior year audit report as Finding 2018-008. The county clerk did not properly pay ad valorem taxes due to the taxing districts. Payments for motor vehicle ad valorem taxes were not made for the months of July and September, except for the county district, and no payments were made for December. In addition, payments were not made for boat ad valorem taxes starting in July with the exception of the county district for July and September. The following chart depicts amounts due to districts.

	State	County	Health	Extension	Ambulance	School	Total
July	\$ 18,398		\$ 2,437	\$ 1,234	\$ 3,086	\$ 17,432	\$ 42,587
August	138	60	83	43	31	173	528
September	15,183		2,138	1,070	2,676	15,117	36,184
October	10	5	1	1	2	13	32
November	11	5	1	1	3	14	35
December	10,161	3,314	1,353	676	1,691	9,554	26,749
Total Due To Districts	\$ 43,901	\$ 3,384	\$ 6,013	\$ 3,025	\$ 7,489	\$ 42,303	\$ 106,115

Also, monthly ad valorem tax reports were not properly maintained. The county clerk was missing the months of January, June, and December.

The county clerk did not have procedures in place to ensure ad valorem taxes were remitted timely. As a result, districts were not paid timely and unable to use funds due to them. In addition, the clerk increases the risk of incurring penalties that are prohibited from being paid from the fee account.

KRS 134.815(1) states, “[t]he county clerk shall, by the tenth of each month, report under oath and pay to the state, county, city, urban-county government, school, and special taxing districts all ad valorem taxes on motor vehicles collected by her for the preceding month, less the collection fee of the county clerk, which shall be deducted before payment to the depository.” KRS 134.815(2) states, “[a]ny county clerk who fails to pay over any taxes collected by him on motor vehicles as required by subsection (1) of this section shall be required to pay a penalty of 1% for each 30 day period or fraction thereof, plus interest at the legal rate per annum of such taxes.”

We recommend the county clerk prepare all monthly reports and pay the taxing districts in accordance with state law. We also recommend the county clerk remit the amounts due above to the state and districts.

*County Clerk’s Response: We will have transferred payment and close out of 2019 Ad Valorem before 12/31/2021.*

**The county clerk did not pay license fees timely and owes \$7,331 to the state:** This is a repeat finding and was included in the prior year audit report as Finding 2018-009. The county clerk did not properly remit weekly license fees to the Kentucky Transportation Cabinet (KYTC). According to weekly report 31, \$10,474 was due to the state treasurer; however, the county clerk remitted \$2,844, leaving a balance of \$7,630 due to the state. However, the county clerk overpaid week 32 by \$299. After reducing the amount due by the overpayment, the county clerk owes \$7,331 to KYTC.

In addition to the payment errors, payments were not remitted timely. Payments were not made at all for five months and only one payment was remitted for three months. Payments were made over four months late. Also, weekly license tax reports were not properly maintained. The county clerk was missing weeks 1-11 and 29-31.

The county clerk did not have procedures in place to ensure weekly license fees were remitted timely. As a result, the state was not paid timely for license fees collected by the county clerk.



The clerk also runs the risk of incurring penalties that are prohibited from being paid from the fee account.

KRS 138.464(1) states, “[t]he county clerk shall report each Monday to the department all moneys collected during the previous week, together with a duplicate of all receipts issued by him during the same period.” KRS 138.464(3) states, “[f]ailure to forward duplicates of all receipts issued during the reporting period or failure to file the weekly report of moneys collected within seven (7) working days after the report is due shall subject the clerk to a penalty of two and on-half percent (2.5%) of the amount of moneys collected during the reporting period for each month or fraction thereof until the documents are filed.”

We recommend the county clerk ensure that payments to the state for license fees are paid timely in the future. We also recommend the county clerk remit the \$7,331 due KYTC for calendar year 2019.

*County Clerk’s Response: We will have transferred payment and close out of 2019 license fees before 12/31/2021.*

**The county clerk did not prepare all franchise tax bills:** This is a repeat finding and was included in the prior year audit report as Finding 2018-010. The sheriff did not receive all franchise tax bills from the county clerk. The county clerk’s office receives the certifications from the Department of Revenue and is supposed to prepare the franchise tax bill.

According to the sheriff, the county clerk did not prepare the franchise tax bills. Since a copy of the certification is not sent to the sheriff’s office, the sheriff had no way to know these certifications existed.

As a result, there are 37 unbilled franchise tax bills, seven of which were from the current audit period and the remaining 30 were from previous audit periods. The total of the unbilled franchise is \$144,087.

Of this amount, \$5,891 is commission due the sheriff, and the remaining \$138,196 is due to taxing districts as follows:

<u>Taxing District</u>	<u>Amount Due</u>
County	\$ 19,017
School	\$ 73,210
Ambulance	\$ 15,991
Health	\$ 13,057
Extension	\$ 16,787
Soil Conservation	\$ 134
<b>Total</b>	<b>\$ 138,196</b>

The county clerk should prepare franchise tax bills upon receipt of the state assessment certification and promptly give to the sheriff to mail. KRS 133.220 requires the county clerk to

prepare tax bills and in part, states, “the county clerk shall prepare for the sheriff...a correct tax bill for each taxpayer in the county.”

We recommend the county clerk work with the sheriff to ensure that franchise tax bills are prepared and mailed timely. Further, we recommend the sheriff show the list of unbilled-uncollected franchises to the county clerk to determine the status of each tax bill.

*County Clerk’s Response: I have had comments before about franchise billing that would have taken place years before I came into office, I am working on an indepth report of what has been billed opposed to what has been paid. I will submit a report to the fiscal court by the end of this year. Any outstanding bills will have been prepared by 12/31/2021.*

**The county clerk has not settled the 2017 fee account:** This is a repeat finding and was included in the prior year audit report as Finding 2018-011. The county clerk has not settled her 2017 fee account. One liability is still due to districts in order to settle the account. The liability is as follows:

<u>Payee</u>	<u>Description</u>	<u>Amount</u>
State	Delinquent Tax Jan-June	\$ 4,977

The county clerk does not have controls in place to ensure that accounts have been settled in a timely manner. The failure to pay liabilities timely causes taxing districts and other governmental agencies to be deprived of funds for significant time periods.

KRS 64.152(1) states, “[i]n counties containing a population of less than seventy-five thousand (75,000), the county clerk shall provide to the fiscal court by March 15 of each year a complete statement for the preceding calendar year of all funds received by his office in an official capacity or for official services, and of all expenditures of his office, including his salary, compensation of deputies and assistants, and reasonable expenses.” KRS 64.152(2) states, “[a]t the time of filing the statement required by subsection (1) of this section, the clerk shall pay to the fiscal court any income of his office, including income from investments, which exceeds the sum of his maximum salary as permitted by the Constitution and other reasonable expenses, including compensation of deputies and assistants. The settlement for excess fees shall be subject to correction by audit conducted pursuant to KRS 43.070 or 64.810, and the provisions of this section shall not be construed to amend KRS 64.820.”

We recommend the county clerk pay this liability as soon as possible.

*County Clerk’s Response: Action is being taken to close out the 2017 fee account.*

**The county clerk has not settled the 2018 fee account:** The county clerk has not settled her 2018 fee account. Several liabilities are due to districts and two receivables are due the clerk to settle the account. The receivables and liabilities are as follows:

**Receivables**

Fiscal Court	Ad Valorem	Overpayment	\$ 5,832
Fiscal Court	Excess Fees	Overpayment	1,052

**Liabilities**

Sheriff	Delinquent Tax	Nov, Dec	385
State	Delinquent Tax	Nov, Dec	356
State	Legal Process	Remaining Due	2,691
State	Affordable Housing		3,954
Usage Account	Usage	Remaining Due	1,052
County	Excess Fees	Remaining Due	<u>56</u>

Total Due to Districts \$ 8,494

The county clerk does not have controls in place to ensure that accounts have been settled in a timely manner. The failure to pay liabilities timely causes taxing districts and other governmental agencies to be deprived of funds for significant time periods. KRS 64.152(1) states, “[i]n counties containing a population of less than seventy-five thousand (75,000), the county clerk shall provide to the fiscal court by March 15 of each year a complete statement for the preceding calendar year of all funds received by his office in an official capacity or for official services, and of all expenditures of his office, including his salary, compensation of deputies and assistants, and reasonable expenses.” KRS 64.152(2) states, “[a]t the time of filing the statement required by subsection (1) of this section, the clerk shall pay to the fiscal court any income of his office, including income from investments, which exceeds the sum of his maximum salary as permitted by the Constitution and other reasonable expenses, including compensation of deputies and assistants. The settlement for excess fees shall be subject to correction by audit conducted pursuant to KRS 43.070 or 64.810, and the provisions of this section shall not be construed to amend KRS 64.820.”

We recommend the clerk collect the receivables due and pay these liabilities as soon as possible.

*County Clerk’s Response: Action is being taken to close out the 2018 fee account.*

The county clerk’s responsibilities include collecting certain taxes, issuing licenses, maintaining county records and providing other services. The clerk’s office is funded through statutory fees collected in conjunction with these duties.

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

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