Auditor of Public Accounts
Mike Harmon

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Contact: Michael Goins
Michael.Goins@ky.gov
502.564.5841
502.209.2867

Harmon Releases Audit of Fleming County Sheriff's Office

FRANKFORT, Ky. – State Auditor Mike Harmon today released the audit of the 2015 financial statement of Fleming County Sheriff Gary Kinder. 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 Fleming County Sheriff in accordance with accounting principles generally accepted in the United States of America. The sheriff's financial statement did not follow this format. However, the sheriff'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 sheriff audits in Kentucky.

As part of the audit process, the auditor must comment on non-compliance 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 fourth quarter report was not submitted to the Department for Local Government. The fourth quarter report (year-end financial statement) was not submitted to the Department for Local Government's (DLG) State Local Finance Officer. DLG mailed the sheriff a delinquent notice dated March 17, 2016, and the report still has not been submitted. The sheriff did not ensure that he or his staff submitted the fourth quarter report to DLG. The sheriff's financial condition is not known to the State Local Finance Officer and DLG, the regulatory agency for county officials. KRS 68.210 authorizes the State Local Finance Officer to require officials from local governments to submit financial reports. Quarterly reports are to be submitted by the twentieth day following the close of the quarter in order to satisfy this requirement. We recommend the sheriff ensure quarterly reports are prepared and submitted by the twentieth day of each month following the close of the quarter.

Sheriff's response: No response.

The sheriff did not present an annual settlement to the fiscal court and did not pay excess fees of $33,901 for calendar year 2015. Before the sheriff can pay excess fees in full, he will need to collect $1,362 from the 2016 fee account for the January 2016 vehicle lease payment paid from the 2015 account, and collect $8,831 of commissions from the 2015 tax account per the 2015 tax settlement audit. These receivables, when added to the 2015 current bank account balance of $23,708, will provide the sheriff with the $33,901 needed to pay excess fees in full. The sheriff did not provide a reason for failing to ensure an annual settlement was presented to the fiscal court and for not making any excess fee payments to the fiscal court. The fiscal court provides funds to the sheriff's office when necessary, therefore it is important for them to know the financial condition of the sheriff's office. Without presenting an annual settlement, the fiscal court is unaware of the financial condition of the sheriff's office. Furthermore, excess fees are budgeted as income for the fiscal court, and not receiving excess fees timely impacts the fiscal court's ability to provide budgeted services.

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. The sheriff's annual settlement and excess fees payment should have been made by September 1, 2016. We recommend the sheriff establish procedures to ensure an annual settlement is presented to the fiscal court by September 1 of each year and excess fees be paid at that time. Excess fee settlements are subject to correction by audit, so even though the receivables increased the amount of excess fees owed after September 1, the sheriff should have already paid the excess fees owed per his annual settlement.

Sheriff's response: No response.

The sheriff comingled charitable contributions with donations. The sheriff comingled charitable contributions with donations by depositing $900 of charitable contributions in the donation account. $800 of this amount was spent during calendar year 2015. The sheriff did not know charitable contributions collected for civic activities should remain separate from donations received for official use of the sheriff's office. Charitable contributions can be used for civic activities that would not be allowable activities for a sheriff's office. Comingling the funds gives the appearance that official funds have been used for unallowable purposes. When the charitable contributions were deposited to the sheriff's donation account, the funds became subject to statutory requirements. In this case, the charitable contributions provided a Christmas shopping trip for some local children.

KRS 61.310(8)(b) states "[a]ny donation to a sheriff shall only be used to further the public purpose of the office. . ." and KRS 61.310(8)(c) requires all donations to be spent in the same manner as other funds of the sheriff's office. This means that donations to a sheriff's office can be used only for purposes that would otherwise be allowable expenses of a sheriff's office. Based on this criteria, a Christmas shopping trip does not qualify as an allowable expense of a sheriff's office. We recommend the sheriff use the donation account only for donations accounted for under the requirements of KRS 61.310. The sheriff can be personally involved in collecting charitable contributions for civic activities, but those funds should remain separate from the sheriff's official funds.

Sheriff's response: No response.

The sheriff comingled donations with forfeiture funds. The sheriff comingled donations with forfeiture funds by transferring $241 from the donation account to the forfeiture account. The sheriff asked the donor to change the intent of the donation so that the funds could be used for drug enforcement. The sheriff did not realize that donations must be used for their original intent. Funds that were donated for a specific reason are at risk for being used for unintended purposes. The forfeiture account is for funds received through the court system for cases involving illegal drug activity under KRS chapter 218A. The donation account is for funds donated by a community member or business to be used for a specific purpose under KRS 61.310.

KRS 61.310(8)(a) requires any donation of money or goods to a sheriff's office list the name and address of the donor, a description and value of the donation, and any purpose for which the donation was given. The original purpose of the $241 donation was to buy ammunition. We recommend the $241 be returned to the donation account to be expended for the purpose of the original donation. We further recommend the sheriff maintain donations and forfeited funds separately as required by KRS chapter 218A and KRS 61.310.

Sheriff's response: Will be put back into donation acc. Used for ammo.

The sheriff's office did not process payroll transactions correctly. Payroll testing revealed the following:

- The sheriff did not pay to employees all earned overtime. The sheriff was allowing only two hours of paid overtime each pay period, regardless of how many overtime hours were worked. Any overtime hours above two were credited as compensatory time on an hour-per-hour basis, rather than at time-and-one-half.
- The sheriff paid the former bookkeeper for bookkeeping and training services during the year. The former bookkeeper was employed by the county attorney's office, and therefore already employed by the county. The payments were made without any tax withholdings, as if the former bookkeeper was a contract labor employee. An individual cannot be both an employee and contract labor for the same employer.

The sheriff was unaware of the overtime rules in regard to overtime calculation and compensation. The sheriff was unaware of contract labor rules in regard to employee compensation. Employees lost income due to not being fully compensated for overtime worked. The former bookkeeper potentially lost overtime wages that could have been earned if all of her work hours for the time periods in question had been considered employee wages. Also, the former bookkeeper did not pay withholdings on the contracted wages, which affects tax liability.

KRS 337.285 requires employees to be compensated for hours worked in excess of 40 per week at a rate of one-half times the hourly wage rate. Employers are also required to obtain written statements from employees indicating that they choose to accept compensatory time in lieu of payment for overtime. Overtime must be paid if worked in absence of the employee's written statement. The Internal Revenue Service does not allow an individual to be both an employee and a contracted laborer for the same employer. Because employees of the county attorney's office and the sheriff's office both report employee wages under the fiscal court's employer identification number, they would be considered the same employer. Furthermore, all wages were subject to tax withholdings and should have been reported on a W-2 form.

We recommend the sheriff comply with KRS 337.285 as it pertains to overtime calculation and compensation. We note that the Kentucky Labor Cabinet conducted an investigation of the sheriff's compliance with Kentucky's wage and hour laws in 2016. This investigation covered calendar year 2015 and the first half of calendar year 2016. The Kentucky Labor Cabinet determined the sheriff owed back wages to three employees. These wages were paid from the 2016 fee account, along with a $250 penalty. The penalty should have been paid from personal funds and will be addressed in the audit of the 2016 fee account. We recommend the sheriff process any future payments to the former bookkeeper as regular payroll transactions with tax withholdings deducted and include these wages on a W-2 form. We also recommend that the sheriff consult with the county treasurer to determine the correct handling of these payments in regard to any potential overtime.

Sheriff's response: Was told could be paid out of Fee acc. by Labor Cabinet, will be paid back to Fee acc. by myself.

The sheriff's office lacks segregation of duties over fee receipts and disbursements. The bookkeeper, deputy clerk, and occasionally the sheriff all collect fee receipts. The bookkeeper prepares a daily bank deposit and reconciles the daily receipts to the income/expense report, and posts items to the receipts ledger. There are initials on the deposit ticket, but no explanation of which initials are those of the preparer, and which belong to the reviewer. The bookkeeper prepares the monthly and quarterly reports. The bookkeeper prepares checks for payment of expenses, and posts checks to the disbursements ledger. The bookkeeper signs the majority of the checks, with the sheriff signing only occasionally. Only one signature is required on the checks. The bookkeeper prepares the monthly bank reconciliation, although there is nothing documented to determine who prepared the reconciliation or that it was reviewed. Also, the reconciliation is only a restatement of bank activity and is not reconciled to the receipts ledger, the disbursements ledger, or the monthly financial reports. Reporting errors would have been found on a monthly basis if a true reconciliation had been performed by the sheriff's office.

The sheriff has not structured his office in a way that segregates duties and responsibilities. The sheriff has also not provided sufficient oversight of the financial reporting process. Without internal controls in place, there is no way to know the fee account financial information is accurate. Internal controls should be implemented and duties should be segregated to decrease the risk of misappropriation of assets, errors, and inaccurate financial reporting to external agencies. By not segregating these duties, there is an increased risk of undetected misappropriation of assets either by error or fraud. Internal controls and proper segregation of duties protect employees and the sheriff 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 sheriff's office implement internal controls and segregate duties as much as possible. Employees receiving payments and preparing deposits should not be posting to the receipts ledger and preparing bank reconciliations. Employees preparing and signing checks should not be posting to the disbursements 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 sheriff could take on the responsibility of preparing or reviewing the daily deposits, receipts and disbursements ledgers, monthly reports, and bank reconciliations. 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. Furthermore, the sheriff could require dual signatures on all checks, with one signature being the sheriff's.

Sheriff's response: No response.

Financial information presented to auditors was inaccurate and required material adjustments. The fourth quarter report, bank reconciliation, receipts ledger, and disbursements ledger presented to auditors contained material errors. The sheriff did not ensure that he or his staff prepared correct quarterly reports, bank reconciliations, and ledgers. Inaccurate financial records provide misleading information to the users of the information. Auditors compared the fourth quarter report, receipts ledger, and disbursements ledger to the bank statement receipts and disbursements and discovered the following:

- Excess fees per the fourth quarter report were $119,332, but actual excess fees were only $33,901 per the audited financial statement.
- Receipts per the fourth quarter report differed from the receipts ledger by $121,371.
- Disbursements per the fourth quarter report differed from the disbursements ledger by $172,646.

Because of the material variances between the fourth quarter report and ledgers, auditors determined the ledgers provided more accuracy when compared to the bank statement receipts and disbursements and used ledgers in place of the fourth quarter report. Even though the ledgers provided more accuracy, the ledgers still needed to be adjusted in following significant amounts:

- Thirteen adjustments to the sheriff's receipts ledger totaling $31,247.
- Seven adjustments to the sheriff's disbursements ledger, totaling $16,116.
- Both of these adjustments include over $16,000 of disbursements posted to the receipts ledger.

Auditors also compared the sheriff's bank reconciliations to the ledgers and bank balance. It was determined the bank reconciliation is only a restatement of the bank activity, and that the bank receipts, disbursements, and ending balance were not actually reconciled to the ledger receipts, disbursements and excess fees. As an example, the sheriff's final bank reconciliation includes an amount as an uncleared check that is labeled as a deposit, but was actually a 2016 fee account item, and did not need to be included in the 2015 bank reconciliation.

KRS 43.075(3) requires that persons performing an audit determine if the county official is accurately recording receipts and expenditures. Auditors are responsible for determining the accuracy of the sheriff's financial information, but are not responsible for correcting the sheriff's financial information. Errors in financial reporting can be corrected during the audit; however, it is time-consuming for auditors, costly for the official, and brings into question the qualifications of those preparing the information. In order to present the most accurate information possible to regulatory agencies, the fiscal court, and the public, we recommend the sheriff implement procedures for ensuring the accuracy of financial information. Ledgers should be posted accurately and the fourth quarter report should agree to ledgers and the bank balance. Receipts and disbursements ledgers should be reconciled to the bank receipts and disbursements on a monthly basis. This would reduce reporting errors.

Sheriff's response: No response.

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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