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Harmon Releases Audit of Garrard County Sheriff's Office

FRANKFORT, Ky. – State Auditor Mike Harmon today released the audit of the 2016 financial statement of Garrard County Sheriff Tim Davis. 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 Garrard 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 noncompliance with laws, regulations, contracts, and grants. The auditor must also comment on material weaknesses involving internal control over financial operations and reporting.

The audit contains the following comments:

The sheriff transferred \$7,000 in federal forfeiture funds to the 2016 fee account: This is a repeat finding reported to the sheriff in the prior year audit report as Finding 2015-001. Our review of the sheriff's bank statements indicates the sheriff transferred \$7,000 of federal forfeiture funds to the fee account in January 2016. Inquiries of the sheriff and bookkeeper indicate these funds were transferred to cover January payroll expenses. Funds for January payroll were not available in the 2016 fee account because the sheriff's application for state advancement was not submitted timely.

Failure to submit the application for state advancement timely resulted in the sheriff not having fee account funds available to make the initial 2016 payroll. When federal forfeiture funds are transferred to the fee account they lose their identity and make it extremely difficult to determine if they were spent for the intended purposes.

The U.S. Department of Justice has issued *A Guide to Equitable Sharing for State and Local Law Enforcement Agencies* (Guide) that “seeks to assist state and local law enforcement agencies participating in the program by clarifying the directives they must follow to obtain and use equitably shared funds.” As stated in the guide, “equitably shared funds shall be used by law enforcement agencies for law enforcement purposes only.” Federal guidelines also include ‘impermissible uses’ of equitable sharing funds; specifically, one of the ‘impermissible uses’ is salaries. The Guide states, “[e]quitably shared funds may not be used to pay the salaries and benefits of sworn or non-sworn law enforcement personnel.”

We recommend the sheriff discontinue the practice of transferring federal forfeiture funds to the fee account to cover payroll and/or fee account expenses. We also recommend the sheriff restrict the expenditure of federal forfeiture funds to those items defined in federal guidelines. Furthermore, we recommend the sheriff make timely application for participation in the state advancement program which is designed to assist sheriffs in obtaining funds necessary to operate the office when fees are not available.

Sheriff's Response: This was done in the prior administration. We no longer use this to supplement salary in January. It will no longer be an issue. Was not done in 2017.

The sheriff did not obtain bids for a disbursement in excess of \$20,000: The Garrard County Sheriff's Office transported inmates for the county in 2016. In June 2016, the sheriff purchased a Ford E-350 van to be used as an inmate transport vehicle. The sheriff expended \$25,000 from the State Forfeiture Account for the purchase; however, bids were not obtained prior to the acquisition of the inmate transport vehicle.

The sheriff did not consider the purchase of a 2007 Ford E-350 van an expenditure that required bidding. The sheriff's failure to obtain bids for the purchase of the van is an issue of non-compliance with regard to the requirements of KRS 424.260(1).

KRS 424.260(1) states, “[e]xcept where a statute specifically fixes a larger sum as the minimum for a requirement of advertisement for bids, no city, county, or district, or board or commission of a city or county, or sheriff or county clerk, may make a contract, lease, or other agreement for materials, supplies except perishable meat, fish, and vegetables, equipment, or for contractual services other than professional, involving an expenditure of more than twenty thousand dollars (\$20,000) without first making newspaper advertisement for bids.”

We recommend the sheriff obtain bids for expenditures in excess of \$20,000 as required by KRS 424.260(1).

Sheriff's Response: Was not aware of this until the audit. Bids will be taken on all expenditures above \$20,000 in all future business.

The sheriff did not make all disbursements by check: The Garrard County Sheriff's Office maintains several accounts for the receipt of grants and funds forfeited as the result of criminal investigations. Generally, the funds in these accounts are used to support law enforcement activities of the sheriff's office. In 2016, the sheriff used funds in the state forfeiture account to purchase an inmate transport vehicle and funds from the grants account to purchase body armor for deputies. In each of these instances the sheriff obtained a cashier's check for the purchase and mailed the cashier's check to the vendor.

According to the sheriff, he did not realize that all disbursements are required to be made by check. The sheriff's failure to make all disbursements in the form of a check drawn on one of the sheriff's accounts is an issue of non-compliance with regard to the Department for Local Government requirements under the authority of KRS 62.810.

The Department for Local Government (DLG), under the authority of KRS 68.210, has established minimum requirements for all local officials (and employees) that handle public funds. One of the minimum established requirements is "[d]isbursements by check only." The sheriff obtained cashier's checks for the purchase of the inmate transport vehicle and the deputies' body-armor. The use of cashier's checks does not meet the requirement for making all "disbursements by check only."

We recommend the sheriff make disbursements by check only as required by the DLG.

Sheriff's Response: Violation was in reference to using cashiers' checks as requested by vendors. Will write checks from office accounts on all purchases in the future.

The sheriff did not maintain supporting documentation for all disbursements: The Garrard County Sheriff's Office did not maintain adequate supporting documentation for all disbursements made during 2016. The sheriff is maintaining monthly credit card statements for credit card disbursements; however, individual receipts or invoices for items appearing on monthly credit card statements have not been maintained as required. Additionally, supporting documentation was not maintained for disbursements made from the sheriff's donation account.

The sheriff awarded scholarships for \$250 to two Garrard County High School seniors on the basis of an essay contest (one female student and one male student). The sheriff did not maintain supporting documentation of the essay contest or the essays submitted. The sheriff did not realize that each transaction appearing on a monthly credit card statement must have adequate supporting documentation (an individual receipt for the disbursement or invoices). The sheriff was also unaware of the necessity of retaining supporting documentation for all disbursements made from the donations account. The sheriff has not established internal controls requiring the maintenance of adequate supporting documentation for all disbursements made from sheriff's office accounts. Payments from the sheriff's fee account agreed with monthly credit card statements in most instances; however, supporting documentation must be maintained for each transaction reflected on monthly statements. Additionally, supporting documentation must be maintained for all disbursements from made from all accounts maintained by the sheriff's office.

The sheriff's failure to maintain adequate supporting documentation for all disbursements is an issue of non-compliance with regard to rulings made by Kentucky's highest court.

In accordance with Funk v. Milliken, 317 S.W.2d 499 (Ky. 1958), Kentucky's highest court ruled that county fee officials' expenditures of public funds will be allowed only if they are necessary, adequately documented, reasonable in amount, beneficial to the public, and not primarily personal in nature.

We recommend the sheriff maintain adequate supporting documentation for all disbursements as required by Kentucky's highest court in Funk v. Milliken.

Sheriff's Response: Did not have a couple receipts to provide to auditor at the time of audit. Located receipts. Will keep all documentation on scholarship expenditures.

The sheriff did not deposit receipts daily: The sheriff did not deposit receipts daily in 2016.

The sheriff has not established internal controls requiring a daily deposit of all funds received by his office. The sheriff's bookkeeper indicated that on most days receipts were minimal. The sheriff's office planned to prepare deposits on Mondays and Fridays unless daily receipts were considered significant. Our testing reflected nine deposits totaling \$52,634 in the month of October 2016 which is consistent with the policy described by the bookkeeper.

Failure to deposit receipts daily is an issue of noncompliance with the Department for Local Government (DLG) requirements for handling public funds. Failure to deposit receipts daily also exposes the sheriff's office to the risks of misappropriation of funds and inaccurate financial reporting.

DLG, under the authority of KRS 68.210, has established minimum requirements for all government officials that handle public funds in the *County Budget Preparation and State Local Finance Officer Policy Manual*. With regard to receipts, government officials handling public funds are required to make "[d]aily deposits into a federally insured bank account."

We recommend the sheriff make deposits daily as required by DLG.

Sheriff's Response: Making daily deposits as necessary.

The sheriff's office lacks adequate internal controls over payroll: Garrard County Sheriff's employees are separated into three groups for payroll purposes. The Garrard County Sheriff's Office prepares payroll for road deputies, court security officers and administrative staff including the sheriff. The personnel in each of these groups have various requirements for employment such as full-time, part-time, and salaried and our testing of payroll included an examination of these requirements and the documentation maintained by the sheriff to support payroll expenditures.

The Garrard County Sheriff does not have appropriate internal controls over the payroll process. During 2016, the following issues were noted:

- The bookkeeper does not have a timesheet.
- One timesheet in the test period was not signed by the employee.
- All deputies' timecards were processed without supervisor approval.
- Two employees were paid without timesheet documentation.
- Comparisons of E-911 logs to timesheets indicated three deputies had nine instances of days worked or at least a partial day that was not included on the employees' timesheets.
- Deputies' timesheets did not reasonably agree to the E-911 activity log.
- County personnel policy requires a lunch period to be taken. Documentation of a lunch period was not noted on timesheets.
- Employees did not always work sufficient hours to be considered full-time employees.
- Timesheets did not accurately reflect actual employees' activity such as sick, vacation, or transport.
- Deputies' on-call time was not properly documented or properly paid.

Weak internal controls over payroll allowed these issues to go undetected and uncorrected by the sheriff.

The sheriff is not in compliance with federal and state labor regulations or the county's Personnel Policy and Procedure code.

Kentucky Revised Statutes (KRS) 337.320(1) requires every employer to "keep a record of: (a) [t]he amount paid each pay period to each employee; (b) [t]he hours worked each day and each week by each employee; and (c) [s]uch other information as the commissioner requires."

Timesheets should be kept for payroll verification, as a record of leave time used, and to document employees are working at least the minimum number of hours to be eligible for full-time benefits such as retirement and health insurance.

The Garrard County Personnel Policy and Procedures policy states, "[l]unch periods will be taken in the period between 11:00 a.m. and 2:00 p.m., except in the case of emergency or necessity as determined by the County Official or Department head."

The United States Department of Labor - Wage and Hour Division defines Kentucky's "Minimum Length of Meal Period Required under State Law for Adult Employees in Private Sector" as "[r]easonable off-duty period, ordinarily ½ hour but shorter period permitted under special conditions, between 3rd and 5th hour of work. Not counted as time worked. Coffee breaks and snack time not to be included in meal period."

The Garrard County Personnel Policy and Procedures policy states "[r]egular full-time employees are those scheduled to work at least 37.5 hours per week. These employees will be eligible for county benefits."

United States Department of Labor fact sheet #22 states "On-Call Time: An employee who is required to remain on call on the employer's premises is working while "on call." An employee who is required to remain on call at home, or who is allowed to leave a message where he/she can

be reached, is not working (in most cases) while on call. Additional constraints on the employee's freedom could require this time to be compensated.”

We recommend the Garrard County Sheriff strengthen internal controls over payroll by requiring employees and supervisors to sign timecards, ensure timecards reflect actual hours worked, require all employees to maintain timecards, and require employees to document lunch periods on timecards. We further recommend the official ensure employees are in compliance with the U.S. Department of Labor, state KRS, and the county’s personnel policy.

Sheriff’s Response: Working closer with bookkeeper to better control payroll & timesheets. New timesheets issued & explained to employees. Lunch period to be documented.

Court security officers’ timesheets did not reflect correct hours worked: Garrard County Court Security Officers (CSOs) maintained individual time sheets which employees prepared on a monthly basis. The timesheets prepared reflect time in and time out on the days worked. Timesheet information is then transferred to a court security schedule on a bi-weekly basis. The court security schedule including the hours worked is sent to the bookkeeper who then issues payroll checks the following Tuesday. Our test procedures included a comparison of CSO’s timesheets to the court security schedule and then to the actual payroll issued on March 29, 2016. Our test procedures indicated that payroll is being paid based on the court security schedules instead of actual time sheets.

Our test procedures further revealed the following inconsistencies when compared to the court security schedules used to issue payroll checks:

- The CSO schedule for February 2016 (used to calculate payroll) was arbitrarily revised and the following adjustments were subsequently made to the March 29, 2016 payroll:
 - 28 hours were added to four employees’ hours for the pay period.
 - 11 hours were deducted from two employees’ hours for the pay period.
- 18 instances of the CSO schedule not agreeing to employees’ timesheets:
 - Six occurrences of under-recording hours actually worked.
 - Ten occurrences of miscalculating hours on the timesheets and then transferred to the CSO schedule.
 - Two instances of employees working over five hours but having no lunch break.
- Four instances of transport time were not included on the timesheets.

The sheriff took office in January 2015 and he was unaware of many of the U.S. Department of Labor requirements and Kentucky Revised Statutes (KRS) that govern payroll. Additionally, human error combined with the lack of internal controls have allowed these payroll issues to go undocumented and uncorrected.

The lack of controls over payroll have allowed employees to be both overpaid and underpaid. Additionally, sufficient supporting documentation for payroll has not been maintained and numerous issues of noncompliance were noted with regard to KRS. Timesheets under and overstated the hours the CSOs actually worked. Misstatements in the amount of hours worked could have prevented employees from receiving benefits they were entitled to, such as retirement.

KRS 337.320(1) requires every employer to “keep a record of: (a) [t]he amount paid each pay period to each employee; (b) [t]he hours worked each day and each week by each employee; and (c) [s]uch other information as the commissioner requires.”

Timesheets should be kept for payroll verification, as a record of leave time used, and to document employees are working at least the minimum number of hours to be eligible for full-time benefits such as retirement and health insurance.

KRS 337.355 requires that "[e]mployers, except those subject to the Federal Railway Labor Act, shall grant their employees a reasonable period for lunch, and such time shall be as close to the middle of the employee's scheduled work shift as possible. In no case shall an employee be required to take a lunch period sooner than three (3) hours after his work shift commences, nor more than five (5) hours from the time his work shift commences[.]”

We recommend the Garrard County Sheriff strengthen internal controls over payroll by ensuring timecards reflect actual hours worked, requiring employees to document lunch periods on timecards, and ensuring compliance with KRS regarding payroll.

Sheriff's Response: New timesheets issued to supply correct information to fulfill requirements.

The sheriff failed to properly classify employees as hourly or salaried: The Garrard County Sheriff's Office paid its deputies and bookkeeper on a monthly basis. Payroll checks were issued around the 25th of each month. Paycheck amounts were the same (based on the individual's 'salary') regardless of the number of hours worked and were for the whole month (i.e. March 1 through March 31). A comparison of timesheets to the E-911 call log indicates deputies do not always work a 40 hour work week but could also work over 40 hours in a week. The bookkeeper did not maintain a timesheet, therefore hours could not be verified, nor could it be determined if the employee worked sufficient hours to be considered a full-time employee. Although the sheriff did keep a calendar of deputies' time off for sick leave or personal days, there was not a total of cumulative time allowed or used and the timesheets did not always reflect the employees' correct status. Additionally, not all timesheets could be located for review and some details (such as the year) were not documented on the timesheets. Our testing revealed one instance of a sheriff's deputy providing inmate transport and subsequently being incorrectly paid as contract labor instead of as a county employee.

For payroll purposes, Garrard County Sheriffs' deputies (road deputies and bookkeeper) were being treated as salaried. A schedule of four days on and four days off for road deputies, without consideration as to the actual work-week start or end, has allowed road deputies to be overpaid some weeks and underpaid in other weeks. The sheriff's bookkeeper and road deputies also did

not maintain sufficient time records to ensure full-time employment status as defined by the county's personnel policy.

KRS 337.320(1) requires every employer to “keep a record of: (a) [t]he amount paid each pay period to each employee; (b) [t]he hours worked each day and each week by each employee; and (c) [s]uch other information as the commissioner requires.”

Timesheets should be kept for payroll verification, as a record of leave time used, and to document employees are working at least the minimum number of hours to be eligible for full-time benefits such as retirement and health insurance.

KRS 337.285(1) states, “[n]o employer shall employ any of his employees for a work week longer than forty (40) hours, unless such employee receives compensation for his employment in excess of forty (40) hours in a work week at a rate of not less than one and one-half (1-1/2) times the hourly wage rate at which he is employed.”

OAG 79-448, discusses Section 3 of the Kentucky Constitution stating that Section 3 “is unequivocal on the point that public emolument to any person must be based on the consideration of public services. By the strongest implication this means ‘public services actually rendered.’ It does not mean ‘public services to be rendered.’ ”

803 KAR 1:070 Section 3(3) (a) states, “[t]o qualify for the administrative exemption, an employee's primary duty shall include the exercise of discretion and independent judgment with respect to matters of significance. The exercise of discretion and independent judgment shall involve the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The term ‘matters of significance’ refers to the level of importance or consequence of the work performed.” 803 KAR 1:070 Section 3(3) (b) states, “[f]actors to consider if determining whether an employee exercises discretion and independent judgment with respect to matters of significance include, but are not limited to: . . . whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval; whether the employee has authority to negotiate and bind the company on significant matters[.]”

803 KAR 1:070 section 10 defines a salaried employee as one being paid on a “salary basis,” meaning an employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee's work. Subject to certain exceptions, an exempt employee must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked. In addition, to qualify for exemption, employees generally must be paid at not less than \$455 per week on a salary basis. If the employer makes deductions from an employee's predetermined salary, i.e., because of the operating requirements of the business, that employee is not paid on a “salary basis.”

Per the IRS website “[u]nder common-law rules, anyone who performs services for you is your employee if you can control what will be done and how it will be done. This is so even when you

give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed.” The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work, not ‘what’ will be done and ‘how’ it will be done.

We recommend the Garrard County Sheriff strengthen internal controls over payroll by requiring employees to complete and sign accurate timesheets and by having the timesheets reviewed and approved by the supervisors (documented by signing or initialing the timesheet). The timesheets could then be provided to the bookkeeper after the hours have been worked which would help to ensure accurate wages are being paid as well as ensure the wages are earned prior to payroll checks being issued. We recommend the sheriff document his policy for sick, vacation, and personal time and ensure the timesheets accurately reflect the use of these days.

We also recommend the sheriff’s office ensure employees are properly categorized as an employee or independent contractor of the sheriff’s office for payroll purposes. We further recommend the sheriff contact the county attorney and/or the department of labor to obtain an opinion if any employee under his supervision can be considered a salaried employee.

Sheriff’s Response: Was following previously accepted classifications from prior administration. Salary, timesheets, wages, schedules all corrected to fix this issue.

The sheriff’s office payroll earnings records do not agree with W-2 forms: Test procedures conducted on the sheriff’s office payroll for 2016 included a comparison of amounts paid reflected in payroll earnings records versus amounts reported on W-2 forms. This comparison revealed variances in amounts paid to the sheriff and several of his deputies. Specifically, the sheriff and eight deputies received compensation (reflected in the earnings records) in excess of the amounts reflected on their individual W-2 forms.

The sheriff’s bookkeeper indicated the cause of the discrepancy could be corrections made in the early part of 2016 to the payroll software program. An error was discovered in the software program with regard to amounts reflected as earnings for the sheriff and deputies. The bookkeeper indicated the amounts omitted from W-2 forms appear to have been associated with KLEFPF earnings, which are received from the state as assistance with law enforcement payroll costs.

W-2 forms issued to the sheriff and eight deputies do not appear to include all income received during 2016.

Amounts paid to the sheriff and deputies as reflected in payroll earnings records should agree with the amounts reported on the W-2 forms, with limited exceptions. We recommend the sheriff examine payroll earnings records and W-2 forms issued to determine if amended W-2s should be issued for 2016. We also recommend that in the future the sheriff ensure the amount of income reported on W-2 forms agrees with amounts reflected in the payroll earnings records.

Sheriff’s Response: Software problem, it has been corrected, and is being monitored on a regular basis for accuracy.

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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