



Auditor of Public Accounts  
Mike Harmon

**FOR IMMEDIATE RELEASE**

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**Harmon Releases Audit of Breathitt County Sheriff's Office**

**FRANKFORT, Ky.** – State Auditor Mike Harmon today released the audit of the 2015 financial statement of 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 Breathitt 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 the internal control over financial operations and reporting.

The audit contains the following comments:

**The sheriff's 2015 fee account is in a deficit totaling \$36,426.** In order to settle the 2015 fee account, the sheriff needs to collect and pay the following:

**Collect:**

Personally from Sheriff

Election Board Payments	\$ 1,650
Disallowed Disbursement - Meritorious Award	5,958
Fund Deficit as of 12/31/15	<u>36,426</u>

**TOTAL TO COLLECT FROM SHERIFF** **\$ 44,034**

**Pay:**

2016 Fee Account for State Advancement	\$ 5,080
State Advancement Balance	<u>38,954</u>

**TOTAL AMOUNTS TO PAY** **\$ 44,034**

There are three reasons the sheriff's 2015 fee account is in a deficit. First, the sheriff failed to pay back his 2015 state advancement (See Finding 2015-003 for additional details). This was the first year the sheriff had taken a state advancement and he was unaware of the requirement that the advancement must be paid back by year end. Second, the sheriff had disallowed disbursements totaling \$5,982 in his 2015 fee account (See Finding 2015-004 for additional details). Since the sheriff was unaware the state advancement had to be paid back by year end, he thought he had the funds available to pay the meritorious award. Finally, the sheriff failed to deposit election board payments totaling \$1,650 into his 2015 fee account (See Finding 2015-005 for additional details). The sheriff was unaware the election board payments were not his personally. These issues create liabilities that still exist in the 2015 fee account. The sheriff is also in violation of statutes related to election board payments and salary maximums.

KRS 64.820 requires the fiscal court to "collect any amount due the county from county officials as determined by the audit" or to "direct the county attorney to institute suit for the collection of the amount reported by the Auditor" if the amount due cannot be collected without lawsuit.

We recommend the sheriff deposit funds of \$44,034 to cover the 2015 fee account deficit, disallowed expenditures, and election board payments not deposited. After these funds have been deposited, we recommend the sheriff pay the remaining balance of the state advancement totaling \$38,954 and pay the 2016 fee account \$5,080 for a partial state advancement payment made from the wrong fee account.

*Sheriff's response: The official did not provide a response.*

**The sheriff's state advancement was not paid in full at calendar year end.** The sheriff applied for and received a state advancement totaling \$50,000 for 2015 in accordance with KRS 64.140. The sheriff did not pay his calendar year 2015 state advancement back in full by year end. The sheriff's office lacked the funds necessary to pay all year-end expenses, so the state advancement was not repaid in full. The sheriff paid \$5,966 from the 2015 fee account, and \$5,080 from the 2016 fee account (See Finding 2015-001 for additional details). State advancements must be paid in full from the fee account in which they are received.

Since this was the first time the sheriff has received a state advancement, he was not aware that the advancement had to be paid in full by year-end and that the advancement could not be repaid from other fee accounts. The sheriff did not fully read and understand the terms and conditions of the state advancement contract. Since the sheriff is in violation of the state advancement contract, he owes the portion of the state advancement still outstanding, which totals \$38,954 and he owes the 2016 fee account \$5,080 for the portion of the 2015 state advancement that was paid using 2016 funds.

KRS 64.140(3) states, “[i]f the total of fees and commissions paid into the State Treasury by the sheriff for any calendar year is insufficient to match the amount of advancements made to the sheriff, his or her sureties and the sheriff in his or her official capacity shall be liable to the state for any excess of advancements over the total of fees and commissions paid into the State Treasury.”

We recommend the sheriff ensure all state advancements are paid in full by the end of the calendar year. Further, we recommend the sheriff deposit funds to cover the outstanding state advancement and the amount owed to the 2016 fee account.

*Sheriff's response: The official did not provide a response.*

**The sheriff had \$5,982 in disallowed disbursements for calendar year 2015.** The sheriff paid \$5,982 as a meritorious award to one employee during calendar year 2015. This is not an allowable disbursement of the fee account and must be personally paid back to the 2015 fee account. The administrative code stipulates that the sheriff must have excess fees available for the meritorious award to be paid. Since the sheriff did not pay back his 2015 state advancement, he is in a deficit for calendar year 2015 and no excess fees were available for the meritorious award (See Findings 2015-001 and 2015-002).

The sheriff's administrative code states “[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 based award or incentive payments for their deputies. This type of incentive award would not be allowable even if excess fees existed. The sheriff is in violation of the administrative code and has spent taxpayer funds on incentive payments that are not allowed by statute.

We recommend the sheriff personally reimburse the 2015 fee account \$5,982 paid erroneously as a meritorious award. Further, we recommend the sheriff review and update his administrative code to be in compliance with statutes regarding fee official incentive payments.

*Sheriff's response: The official did not provide a response.*

**Election board payments were not deposited into the official's fee account.** The sheriff received \$1,650 during calendar year 2015 for his service on the local election board. The election board payments were not deposited into the sheriff's fee account. The sheriff was not

aware that these payments are not his personally and are, if fact, part of his official duties as sheriff. As a result, the sheriff personally owes \$1,650 back to the 2015 fee account and is in violation of regulations related to election board payments and salary maximums. KRS 117.035 outlines the regulations applicable to local election boards and KRS 64.5275 establishes salary maximums for fee officials. We recommend the sheriff personally reimburse the 2015 fee account \$1,650 for the total amount of payments received as an election board officer.

*Sheriff's response: The official did not provide a response.*

**The sheriff had \$4,375 in disallowed disbursements in his 2009 fee account that remain unpaid.** The prior year audit noted that the sheriff had \$4,375 of disallowed disbursements in his 2009 fee account. The 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 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. 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." Section (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 ninety (90) days from the date of receiving the Auditor's or certified public accountant's report."

We recommend the sheriff remit personal funds of \$4,375 to the fiscal court for repayment of the disallowed disbursement. We recommend the sheriff monitor his disbursements to ensure all disbursements are allowable. We will refer this finding to the Breathitt County Attorney.

*Sheriff's response: The official did not provide a response.*

**The sheriff had \$339 in disallowed disbursements in his 2012 fee account that remain unpaid.** The prior year audit noted that the sheriff had \$339 in disallowed disbursements which includes \$25 in donations, and \$314 in books purchased for students. These were not necessary expenses in the operation of the sheriff's office and were disallowed. 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.” Section (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 ninety (90) days from the date of receiving the Auditor’s or certified public accountant’s report.”

We recommend the sheriff remit personal funds of \$339 to the fiscal court for repayment of the disallowed disbursement. We recommend the sheriff monitor his disbursements to ensure all disbursements are allowable. We will refer this finding to the Breathitt County Attorney.

*Sheriff’s response: The official did not provide a response.*

**The sheriff’s office lacks adequate segregation of duties.** The sheriff’s office lacks adequate segregation of duties due to the responsibilities of receiving, recording, depositing, and reconciling cash being delegated to the same individual. Since only one person performs these functions, there is no assurance that financial transactions are 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 the sheriff cannot segregate duties due to small staff size, he should implement and document compensating controls to limit the risk associated with inadequate segregation of duties. Examples of compensating controls include: the 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 sheriff could document his review process by initialing reports and supporting documentation.

We recommend the sheriff segregate the duties of receiving, recording, depositing, and reconciling cash or implement and document compensating controls to offset this control issue.

*Sheriff’s response: The official did not provide a 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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