



Auditor of Public Accounts
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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 2018 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.

Our responsibility is to express an opinion on the financial statement based on our audit. 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.

The former Breathitt County Sheriff did not maintain adequate accounting records of fee account receipts and disbursements to allow us to apply other auditing procedures to satisfy ourselves as to the validity of fee account receipts and disbursements, which resulted in a high level of audit risk. Due to the apparent lack of internal controls and the above noted issue, we were unable to reduce the audit risk to an acceptable level.

Because of the significance of the matters described in the Basis for Disclaimer of Opinion paragraph, we have not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion. Accordingly, we do not express an opinion on the financial statement.

In addition, Findings 6, 7, 8, 9, 10, and 11 will be referred to the Breathitt County Attorney.

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 did not provide adequate oversight for the financial activities of his office: Numerous weaknesses in the control environment of the former Breathitt County Sheriff's office significantly increased the risk of fraud and misappropriation of funds. The former sheriff failed to provide receipt and disbursement ledgers that summarized the financial activity of his office and failed to provide bank reconciliations. Failure to perform these basic accounting function resulted in several other findings, which are summarized below. The former sheriff relied heavily on employees to perform financial accounting functions, but did not ensure adequate training and supervision for staff. The former sheriff also failed to implement adequate internal controls and exercise sufficient management oversight and involvement in relation to the financial activities of his office.

We have noted numerous deficiencies and noncompliance issues:

- Financial reports were not filed as required (see Finding 2018-002)
- Duties were not adequately segregated (see Finding 2018-003)
- A data breach policy was not implemented as required (see Finding 2018-004)
- Deposits were not adequately secured with pledge of securities (see Finding 2018-005)
- The 2018 fee account was not properly settled (see Finding 2018-006)
- The 2017 fee account was not properly settled (see Finding 2018-007)
- The 2016 fee account was not properly settled (see Finding 2018-008)
- The 2015 fee account was not properly settled (see Finding 2018-009)
- Disallowed disbursements were noted for 2018 (see Finding 2018-010)
- Disallowed disbursements from 2009 and 2012 remain unpaid (see Finding 2018-011)

Due to the significance of the issues noted above, auditors were unable to obtain sufficient financial information to issue an audit opinion. We cannot issue an opinion on the financial statement as the former sheriff failed to provide a financial statement and failed to provide adequate supporting documentation for financial activity.

Management has a responsibility to design and implement internal controls that provide reasonable assurance regarding the reliability of financial reporting. Internal control is a management process for keeping an entity on course in achieving its business objectives. One component of a strong internal control system is management oversight to ensure the controls are functioning as expected and that all employees and staff are performing their duties in relation to the overall control structure. Internal controls should ensure resources are protected from waste, loss, and misuse and ensure reliable data is obtained, maintained, and fairly disclosed. Entities are required to establish controls to provide reasonable assurance that the recording, processing, and reporting of data is properly performed within the framework of financial management systems.

The former sheriff should have exercised adequate oversight and should have been sufficiently involved in the operations and internal control structure of his office to ensure complete and accurate financial reporting and compliance with all applicable laws and regulations. We recommend the current sheriff implement these controls.

Former Sheriff's Response: The former sheriff did not provide a response.

The former sheriff did not submit financial reports as required: The former sheriff did not submit quarterly financial reports to the Department for Local Government (DLG) and did not submit an annual settlement to the fiscal court. The former sheriff did not have adequate controls and adequate oversight in place to ensure financial reporting is timely, complete, and accurate. Failure to submit the required fourth quarter financial report prevents proper oversight by DLG and increases the risk that errors, misstatements, or fraud can occur and go undetected for a significant time period. In addition, failure to submit an annual settlement to the fiscal court results in the fiscal court not being adequately informed of the financial activities of the former sheriff's office and in the limited ability to appropriately monitor said financial activity and make fully informed financial decisions for the county.

KRS 68.210 gives the state local finance officer the authority to prescribe a uniform system of accounts. Pursuant to KRS 68.210, the state local finance officer has prescribed minimum accounting and reporting standards in DLG's *County Budget Preparation and State Local Finance Officer Policy Manual*, which requires complete and accurate quarterly reports for fee officials be submitted by the 30th day following the close of each quarter.

KRS 134.192(1) states, "[e]ach sheriff shall annually settle his or her accounts with the department, the county, and any district for which the sheriff collects taxes on or before September 1 of each year." KRS 134.192(11) (a) and (b) continue to outline the requirements of the settlement: "[a] complete statement of all funds received by his or her office for official services, showing separately the total income received by his office for services rendered, exclusive of his commissions for collecting taxes, and the total funds received as commissions for collecting state, county, and school taxes; [and] a complete statement of all expenditures of his or her office, including his salary, compensation of deputies and assistants, and reasonable expenses."

We recommend the former sheriff submit financial reports as required. Even though the former sheriff is not in office any longer, the financial activity for calendar year 2018 needs to be summarized and reported in accordance with statutes.

Former Sheriff's Response: The former sheriff did not provide a response.

The former sheriff's office lacked adequate segregation of duties: This is a repeat finding and was included in the prior year audit report as Finding 2017-002. 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 without proper oversight or compensating controls, 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 that undetected errors, misstatements, or fraud will occur. If duties could not be adequately segregated due to a small staff size, 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 document his review process by initialing reports and supporting documentation.

The former sheriff should have segregated the duties of receiving, recording, depositing, and reconciling cash or implemented and documented compensating controls and oversight procedures to offset this control issue. We recommend the current sheriff implement these controls.

Former Sheriff's Response: The former sheriff did not provide a response.

The former sheriff did not adopt a written data breach policy: The former sheriff did not adopt a personal information security and data breach investigation policy as required by KRS 61.932 and Department for Local Government (DLG) policy DLG-PPI 100. The former sheriff was not aware of the requirement and failed to implement a policy as required. The former sheriff is not in compliance with KRS 61.932 or DLG-PPI 100. In addition, there is a risk that the former sheriff did not have a proper level of protection for sensitive personal information. Also, there is a risk that if a data breach were to occur, the former sheriff would not be able to handle the breach in accordance with DLG's policy.

KRS 61.932(1)(a) states, “[a]n agency...that maintains or otherwise possesses personal information, regardless of the form in which the personal information is maintained shall implement, maintain, and update security procedures and practices, including taking any appropriate corrective action, to protect and safeguard against security breaches.”

KRS 61.932(1)(b) states, “[r]easonable security and breach investigation procedures and practices established and implemented by units of government listed under KRS 61.931(1)(b) and (c) that are not organizational units of the executive branch of state government shall be in accordance with policies established by the Department for Local Government.”

In accordance with KRS 61.932 the DLG has issued Policy Number: DLG-PPI 100 which states, “The purpose of this policy is to provide guidance to Local Governmental Units (“LGUs”) to minimize the risk of disclosing personal information and setting practical guidelines for effectively responding to security incidents. LGUs are encouraged to tailor this policy to meet their own specific security and operational requirements. Having a policy is important because it promotes consistent response procedures to make sure appropriate actions are taken. This policy sets forth the procedures and practices pursuant to KRS 61.932 for LGUs to follow in order to:

- 1) Identify vulnerabilities;
- 2) Eliminate or mitigate those vulnerabilities;

- 3) Recognize when an incident has occurred;
- 4) Notify appropriate personnel in the event of an incident;
- 5) Respond to information security threats; and
- 6) Recognize events that require special handling due to their potential impact or special reporting due to legal or other concerns.

In addition, this policy requires LGUs to enact appropriate measures to protect information stored on media, both digital and non-digital, during the entire term of its use, until its destruction.” The former sheriff should have developed and implemented a data breach policy and implemented procedures to ensure compliance with KRS 61.932 and DLG-PPI 100. We recommend the current sheriff implement these controls.

Former Sheriff's Response: The former sheriff did not provide a response.

The depository institution failed to pledge or provide sufficient collateral to protect deposits:

On December 4, 2018, the former Breathitt County Sheriff had deposits of public funds totaling \$592,966 that were uninsured and unsecured. The former sheriff and the depository institution had a written agreement stating the depository institution would provide adequate collateral to protect the former sheriff's deposits. Even though this written agreement existed, the depository institution did not provide enough collateral to cover deposits. By not providing adequate collateral, deposits were at risk in the event of a bank failure. According to KRS 66.480(1)(d) and KRS 41.240(4), the depository institution should pledge or provide sufficient collateral which, together with Federal Deposit Insurance Corporation (FDIC) insurance, equals or exceeds the amount of public funds on deposit at all times. The former sheriff should have monitored deposit balances and inquired to the depository institution if public funds were adequately protected and secured at all times.

Former Sheriff's Response: The former sheriff did not provide a response.

The former sheriff has not settled his 2018 fee account: The former sheriff has a balance of \$94 in his 2018 fee account. Due to inadequate recordkeeping, documentation, and reporting, there may be additional receivables and liabilities that affect the account balance that were not discovered during audit procedures. As discussed in Finding 2018-001, the former sheriff did not have adequate controls in place and adequate oversight for financial activity to ensure the 2018 fee account was settled timely. The former sheriff is in violation of statute regarding settlement of his accounts. Additionally, the risk of misappropriation or fraud increases when accounts are not settled timely. Finally, excess fees are budgeted as income for the fiscal court and failure to receive excess fees timely impacts fiscal court's ability to provide budgeted services.

KRS 134.192(1) states, “[e]ach sheriff shall annually settle his or her accounts with the department, the county, and any district for which the sheriff collects taxes on or before September 1 of each year.” KRS 134.192(11) (a) and (b) continue to outline the requirements of the settlement: “[a] complete statement of all funds received by his or her office for official services, showing separately the total income received by his office for services rendered, exclusive of his commissions for collecting taxes, and the total funds received as commissions for collecting state, county, and school taxes; [and] a complete statement of all expenditures of his or her office,

including his salary, compensation of deputies and assistants, and reasonable expenses.” 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.

KRS 64.820 states, “(1) The 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. (2) In 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 former sheriff determine if any additional receivables or liabilities are outstanding that may affect the 2018 fee account and settle the account. Depending on the disposition of the disallowed disbursements discussed in Finding 2018-010, additional excess fees may be due for calendar year 2018. We will refer this finding to the Breathitt County Attorney.

Former Sheriff's Response: The former sheriff did not provide a response.

The former sheriff has not settled his 2017 fee account: The former sheriff has a balance of \$1,019 in the 2017 fee account. Per the prior year audit documentation, \$8,500 was due to the 2017 fee account from the 2018 fee account. This amount was paid to the fiscal court from the 2018 fee account. The former sheriff also owes \$600 to the 2017 fee account due to disallowed disbursements for inadequate documentation. As discussed in Finding 2018-001, the former sheriff did not have adequate controls in place and adequate oversight for financial activity to ensure the 2017 fee account was settled timely. The former sheriff was aware that the 2017 fee account had not been settled, but failed to take corrective action as recommended in the prior year audit. The former sheriff is in violation of statute regarding settlement of his accounts. Additionally, the risk of misappropriation or fraud increases when accounts are not settled timely. Finally, excess fees are budgeted as income for the fiscal court and failure to receive excess fees timely impacts fiscal court's ability to provide budgeted services.

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KRS 64.820 states, “(1) The 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. (2) In 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 former sheriff deposit personal funds of \$600 into the 2017 fee account for prior year disallowed disbursement. With the balance in the account of \$1,019, the former sheriff should pay \$1,619 to the fiscal court as additional excess fees for calendar year 2017. We will refer this finding to the Breathitt County Attorney.

Former Sheriff's Response: The former sheriff did not provide a response.

The former sheriff has not settled his 2016 fee account: This is a repeat audit finding and was included in the prior year audit report as Finding 2017-004. The former sheriff had disallowed disbursements totaling \$3,065 in his 2016 fee account due to inadequate supporting documentation. Additionally, the former sheriff failed to deposit election board payment totaling \$5,450 into his 2016 fee account. The 2016 fee account has a balance of \$8,690. As discussed in Finding 2018-001, the former sheriff did not have adequate controls in place and adequate oversight for financial activity to ensure the 2016 fee account was settled timely. The former sheriff was aware that the 2016 fee account had not been settled but failed to take corrective action as recommended in the prior year audit. The former sheriff is in violation of statute regarding settlement of his accounts. Additionally, the risk of misappropriation or fraud increases when accounts are not settled timely. Finally, excess fees are budgeted as income for the fiscal court and failure to receive excess fees timely impacts fiscal court's ability to provide budgeted services.

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KRS 64.820 states, “(1) The 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. (2) In 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 former sheriff deposit personal funds of \$3,065 into the 2016 fee account for prior year disallowed disbursement and personal funds of \$5,450 for election board payments.

With the balance in the account of \$8,690, the former sheriff should pay \$17,205 to the fiscal court as additional excess fees for calendar year 2016. We will refer this finding to the Breathitt County Attorney.

Former Sheriff's Response: The former sheriff did not provide a response.

The former sheriff has not settled his 2015 fee account: This is a repeat audit finding and was included in the prior year audit report as Finding 2017-003. The former sheriff had disallowed disbursements totaling \$5,958 in his 2015 fee account due to a meritorious award paid that was not statutorily allowable. Additionally, the former sheriff failed to deposit election board payment totaling \$1,650 into his 2015 fee account. As discussed in Finding 2018-001, the former sheriff did not have adequate controls in place and adequate oversight for financial activity to ensure the 2015 fee account was settled timely. The former sheriff was aware that the 2015 fee account had not been settled but failed to take corrective action as recommended in the prior year audit. The former sheriff is in violation of statute regarding settlement of his accounts. Additionally, the risk of misappropriation or fraud increases when accounts are not settled timely. Finally, excess fees are budgeted as income for the fiscal court and failure to receive excess fees timely impacts fiscal court's ability to provide budgeted services.

KRS 134.192(1) states, "[e]ach sheriff shall annually settle his or her accounts with the department, the county, and any district for which the sheriff collects taxes on or before September 1 of each year." KRS 134.192(11) (a) and (b) continue to outline the requirements of the settlement: "[a] complete statement of all funds received by his or her office for official services, showing separately the total income received by his office for services rendered, exclusive of his commissions for collecting taxes, and the total funds received as commissions for collecting state, county, and school taxes; [and] a complete statement of all expenditures of his or her office, including his salary, compensation of deputies and assistants, and reasonable expenses." 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.

KRS 64.820 states, "(1) The 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. (2) In 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 former sheriff deposit personal funds of \$5,958 into the 2015 fee account for prior year disallowed disbursements and personal funds of \$1,650 for election board payments. With the balance in the account of \$162, the former sheriff should pay \$7,770 to the fiscal court as additional excess fees for calendar year 2015. We will refer this finding to the Breathitt County Attorney.

Former Sheriff's Response: The former sheriff did not provide a response.

The Former Sheriff Had \$20,240 In Disallowed Disbursements In His 2018 Fee Account: The former sheriff wrote checks totaling \$20,240 to his bookkeeper from the 2018 fee account after his term of office ended. According to the former sheriff and former bookkeeper, these payments were for work performed to complete reports, finalize financial information, and settle the former sheriff's accounts. While it can be expected to incur some expense for settling all the former sheriff's accounts, we question the validity and reasonableness of these disbursements. Payments to settle the accounts are required to be paid by the fiscal court and require sufficient documentation to ensure the payments are reasonable and necessary. As noted in findings 2018-001 and 2018-002, sufficient financial records, reports, and documentation were not provided to auditors even though more than \$20,000 was paid to the bookkeeper to ensure these records were complete and accurate. There was also no supporting documentation (i.e. time records) provided to auditors regarding the disallowed disbursements.

These improper payments occurred due to the former sheriff's lack of oversight over financial activities, as discussed in Finding 2018-001, and failure to implement adequate internal controls to prevent and detect disallowed disbursements. The former sheriff paid expenses in direct violation of those outlined as allowable for fee officials. Taxpayer funds were spent inappropriately and the fiscal court did not get the amount of excess fees that should have been paid after all other liabilities of the 2018 fee account were settled.

KRS 64.830 states "(4) The outgoing county official shall be allowed and paid by the fiscal court the reasonable expenses actually incurred in preparing the receipt required under this section. Reasonable expenses actually incurred may include his office expenses and salary, and salaries of deputies and employees paid in accordance with the schedule of the previous year or the amount paid an auditor necessary in determining and verifying the final settlement to the fiscal court."

Additionally, In 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 former sheriff discuss this matter with the fiscal court and county attorney in order to ensure proper disposition of these disallowed expenditures. We will refer this finding to the Breathitt County Attorney.

Former Sheriff's Response: The former sheriff did not provide a response.

The former sheriff has disallowed disbursements from prior years that remain unpaid: This is a repeat finding and was included in the prior year audit report as Findings 2017-005 and 2017-006. The former sheriff had \$4,375 in disallowed disbursements for calendar year 2009. 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 had \$339 in disallowed disbursements for calendar year 2012. 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 has been aware of these unpaid disallowed disbursements for several years but has not taken corrective action to remedy these findings. The former sheriff paid expenses in direct violation of those outlined as allowable for fee officials. This disallowed disbursement remains unpaid.

In *Funk vs. 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 states "(1) The 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. (2) In 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."

Since the 2012 and 2009 fee accounts have been closed, we recommend the former sheriff turn over personal funds of \$4,714 to the fiscal court as additional excess fees for calendar year 2009 and calendar year 2012 for repayment of the disallowed disbursements. We will refer this finding to the Breathitt County Attorney.

Former Sheriff's Response: The former sheriff 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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