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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 2018 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.

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.

This audit will be referred to the Office of the Attorney General (OAG), Department of Revenue and the Department for Local Government (DLG) for further review.

The audit contains the following comments:

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 pay delinquent taxes to districts timely
- The county clerk did not remit the correct amount or timely payments of affordable housing to the state
- The county clerk did not remit payments of legal process tax to the state
- The county clerk owes \$16,452 of usage tax to the state
- The county clerk owes ad valorem taxes to taxing districts in the amount of \$79,211
- The county clerk did not pay license fees timely
- The county clerk did not prepare all franchise tax bills
- The county clerk has not settled the 2017 fee account
- The county clerk did not deposit grant funds timely

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), Department of Revenue and the Department for Local Government (DLG).

County Clerk's Response: The county clerk did not provide a response.

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 2017-007. The county clerk prepares daily deposits, prepares and signs checks, and collects cash from customers. The bookkeeper posts to receipts disbursements ledger, reconciles bank accounts, and prepares quarterly report. The 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 misappropriation 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: The county clerk did not provide a response.

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 2017-002. 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	2/20/2018	10
February	4/25/2018	46
March	4/17/2018	7
April	5/29/2018	19
May	6/14/2018	4
June	7/17/2018	7
July	9/26/2018	47
August	9/26/2018	16
September	12/12/2018	63
October	12/12/2018	32
November	12/27/2018	17
December	1/24/2019	14

Also, the county clerk has not remitted all excess due to the county, an additional \$8,876 is due. 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, the 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: The county clerk did not provide a response.

The County Clerk Did Not Pay Delinquent Taxes To Districts Timely: This is a similar issue from the prior year and was included in the prior year audit report as Finding 2017-006. The county clerk did not pay March delinquent tax payments to districts timely. One taxing district did not get payment in October, seven taxing districts did not get payment in November and nine taxing districts did not get payment in December. The following chart depicts how much is owed to each district.

District	Total Due
State	\$ 356
County	286
Fire Acres	17
School	1,259
Health	203
Extension	474
Soil	178
Ambulance	291
Sheriff	385
<i>Total</i>	\$ 3,449

The county clerk does not have controls in place in order to make sure delinquent tax payments are made and are 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 clerk pay the amounts above to the districts without delay. We also 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: The county clerk did not provide a response.

The county clerk did not remit the correct amount or timely payments of affordable housing to the state: For the first few months affordable housing fees were being posted in the software on vehicle lien releases in error. While customers were not being charged this fee on their transactions, on the reporting end a \$6 affordable housing fee was being posted to every transaction. The county clerk had to manually remove the affordable housing fees in the software that did not belong. The first quarter was remitted timely but was incorrect due to error. The clerk has not remitted second, third, or fourth quarter payments. As a result \$3,954 is due to the state for the calendar year 2018.

The county clerk does not have proper internal controls implemented to ensure that the correct amount and timely payments are made for affordable housing. As a result, the county clerk incorrectly or failed to remit affordable housing to the state. The county clerk is supposed to file a report with the Department of Revenue 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 the Department of Revenue without delay. We also recommend the county clerk implement internal controls to ensure that affordable housing fees are accounted for properly, and paid timely.

County Clerk's Response: The county clerk did not provide a response.

The county clerk did not remit payments of legal process tax to the state: The county clerk did not remit payments from July to December to the state, a total of \$2,691, for legal process taxes collected during calendar year 2018. 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. As a result, the county clerk failed to remit legal process tax 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 and pay \$2,691 due.

County Clerk's Response: The county clerk did not provide a response.

The county clerk owes \$16,452 of usage tax to the state: Usage tax is due to the state in the amount of \$16,452. The county clerk did not ensure the amounts collected for usage tax for each day was properly submitted to the state as required. Usage tax is to be remitted to the state daily, but we found the clerk was up to five weeks behind. In addition, there were four payments made twice.

The county clerk did not have procedures or internal controls in place to ensure the correct amount of usage tax was remitted from the fee account to the usage tax account daily. In addition, the county clerk was not reconciling her usage tax account monthly. As a result, the county clerk was unable to determine if the proper amount of usage tax had been remitted from the fee account to

the usage tax account. By 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 underpaying usage tax to the state. The clerk also runs the risk of incurring penalties that are prohibited from being paid from the fee account.

KRS 138.464 requires the county clerk to deposit motor vehicle usage tax and sales and use tax collections not later than the next business day following receipt in a Commonwealth of Kentucky, department account in a bank designated as a depository for state funds. The clerk may be required to then cause the funds to be transferred from the local depository bank to the State Treasury in whatever manner and at times prescribed by the commissioner of the department or his designee. Failure 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 pay the \$4,093 from the fee account to the usage account. Also, we recommend the county clerk resolve the \$16,452 in the usage account that has not been remitted to the state. Finally, we recommend the county clerk implement internal controls to ensure the correct amount of usage tax is transferred from the fee account to the usage tax account daily, as well as remit that same amount to the state timely. The easiest way to do this would be to perform monthly bank reconciliations of the usage tax account.

County Clerk's Response: The county clerk did not provide a response.

The county clerk owes ad valorem taxes to taxing districts in the amount of \$79,210: The county clerk did not pay the correct amount of ad valorem taxes to taxing districts. The following chart depicts amount due to or due from districts as well as the corresponding months districts were paid incorrectly:

	State	County	Health	Extension	Ambulance	School	Total
January	\$ 1,990.54						\$ 1,990.54
April	22,353.66	\$ (6,583.83)	\$ (2,671.88)		\$ 3,417.45		16,515.40
September	1,381.51						1,381.51
October	3,305.52	752.18	315.02	\$ 153.42	383.76	\$ 2,168.10	7,078.00
November	12,998.19		1,686.66	843.94	2,110.31	11,920.41	29,559.51
December	9,449.68		1,348.48	674.43	1,686.43	9,526.66	22,685.68
Total Due To (From) Districts	\$ 51,479.10	\$ (5,831.65)	\$ 678.28	\$ 1,671.79	\$ 7,597.95	\$ 23,615.17	\$ 79,210.64

The county clerk did not have internal controls or procedures in place to ensure ad valorem taxes were remitted timely. According to the county clerk, there were calculation errors on some of the monthly reports, and the unpaid amounts were an oversight.

As a result, districts were not paid timely and unable to use funds due to them accordingly. The county district was overpaid, and owes money back to the county clerk's office. This could impact the county's budget. The clerk also runs 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 ensure ad valorem reports are calculated correctly prior to payment to districts. Further, the county clerk should implement internal controls by having someone else review calculations before the checks are written. The county clerk should pay these taxing districts the amounts due to them, and collect the amount due from the county as soon as possible.

County Clerk’s Response: The county clerk did not provide a response.

The county clerk did not pay license fees timely: The county clerk did not remit weekly license fees timely to the state treasurer. Out of 52 weeks in the year, only 21 weeks were paid timely. Week’s 43-52 license fees were not paid at all during 2018; instead, they were remitted to the state treasurer as one lump sum in the amount of \$15,820 on February 21, 2019, eight to sixteen weeks late. The county clerk did not have procedures or internal controls 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 implement internal controls to ensure that payments to the state for license fees are paid timely in the future.

County Clerk’s Response: The county clerk did not provide a response.

The clerk did not prepare all franchise tax bills: The county clerk’s office receives the certifications from the Department of Revenue. Once the certification is received, the clerk’s office is responsible for preparing the franchise tax bill. However, there are 26 unbilled franchise tax bills, totaling \$138,216. Of this amount, \$5,650 is commission due to the sheriff, and the remaining \$132,566 is due to the taxing districts.

The county clerk does not have internal controls in place to ensure that franchise bills are being prepared when certifications are received. By not preparing the franchise tax bills, the sheriff’s

office is unable to mail them, and the county, school, and other taxing districts cannot receive the tax revenues they are entitled (see chart). These tax districts rely on the timely receipt of tax revenues; therefore, the tax districts' budgets and cash flows were negatively affected. The share of the unbilled franchise taxes for each taxing district are as follows:

<u>Taxing Districts</u>	<u>Amount Due</u>
County	\$18,459
School	\$70,561
Ambulance	\$15,549
Health	\$12,180
Extension	\$15,695
Soil	<u>\$122</u>
Total	\$132,566

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 implement controls to ensure that franchise tax bills are prepared promptly after the certification is received. Furthermore, the clerk needs to immediately prepare the 26 unbilled franchise tax bills and give to the sheriff for collection.

County Clerk's Response: The county clerk did not provide a response.

The county clerk has not settled the 2017 fee account: Several liabilities are due to districts in order to settle the account. Those liabilities are as follows:

Liabilities			
Ambulance	Ad Valorem	October	2,366
Ambulance	Delinquent Tax	October	152
Ambulance	Delinquent Tax	Jan-June	4,022
Extension	Delinquent Tax	Jan-June	2,842
County	Delinquent Tax	Jan, Feb, May	22
Health	Delinquent Tax	Jan-June	3,085
Soil	Delinquent Tax	Jan-June	2,125
State	Legal Process	Additional	258
State	Delinquent Tax	Jan-June	4,977
State	Affordable Housing		678
County	Ad Valorem	Remaining Due	157
Health	Ad Valorem	Remaining Due	157
Ambulance	Ad Valorem	Remaining Due	157
School	Ad Valorem	Remaining Due	157
Extension	Ad Valorem	Remaining Due	158
County	Excess Fees	Interest Earned	3
	Total Due to Districts		21,316

The 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 a significant time periods.

KRS 64.152 states, “(1) In 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. (2) At 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 pay these liabilities as soon as possible.

County Clerk’s Response: The county clerk did not provide a response.

The county clerk did not deposit grant funds timely: The county clerk did not deposit libraries and archives grant funds timely. The county clerk received a check from libraries and archives in September 2017 to be used for scanning documents, but did not deposit the check until September 20, 2018. The check was returned on September 24, 2018 due to being stale dated.

The county clerk did not have procedures or internal controls in place to ensure grant funds were deposited timely. According to the county clerk, her intention was to wait until the company performing the scanning completed their services before she did anything with the check. In addition, the county clerk indicated she needed the county judge/executive to go with her to the bank to open a grant bank account to deposit the check into.

As a result, the check had become stale and was no longer valid when the county clerk set up a grant bank account and deposited the check. Therefore, the county clerk had to request a new check from the department of libraries and archives. By not making deposits timely the county clerk's office could create the opportunity for the misappropriation of assets to occur and go unnoticed. Additionally, the county clerk was not in compliance with KRS 68.210.

KRS 68.210 gives the state local finance officer the authority to prescribe a uniform system of accounts. This uniform system of accounts, as outlined in the *County Budget Preparation and State Local Finance Officer Policy Manual* includes performing daily check-out procedures and making daily deposits intact into a federal insured banking institution.

We recommend the county clerk's office make deposits daily in accordance with KRS 68.210. We also recommend the clerk implement controls to ensure all checks are deposited daily.

County Clerk's Response: The county clerk did not provide a response.

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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