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FOR IMMEDIATE RELEASE

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### **Harmon Releases Audit of Garrard County Sheriff's Fee Account**

**FRANKFORT, Ky.** – State Auditor Mike Harmon today released the audit of the 2019 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 the internal control over financial operations and reporting.

The audit contains the following comments:

**The sheriff's office does not have adequate segregation of duties:** This is a repeat finding and was in the prior year audit report as Finding 2018-001. The sheriff's office does not have segregation of duties over receipts, disbursements, and monthly reconciliations. Internal control procedures indicate the sheriff's bookkeeper opens mail, collects payments from customers, prepares deposits, prepares checks for the sheriff's signature, posts transactions to the receipts and disbursements ledgers, prepares monthly and quarterly reports, and prepares monthly bank reconciliations.

The sheriff does not have segregation of duties as part of the internal control procedures for his office. The lack of adequate segregation of duties increases the risk that undetected errors could occur. Additionally, the lack of adequate segregation of duties could result in misappropriation of assets or inaccurate financial reporting to external agencies, such as the Department for Local Government (DLG).

A lack of adequate segregation of duties could result in undetected misappropriation of assets and inaccurate financial reporting. Good internal controls dictate the same employee should not handle, record, and reconcile receipts. Further, the same employee should not be responsible for preparing, recording, and reconciling disbursements. The segregation of duties over various accounting functions such as opening mail, preparing deposits, recording receipts and disbursements, and preparing monthly reports, or the implementation of compensating controls is essential for providing protection from asset misappropriation and inaccurate financial reporting. Additionally, proper segregation of duties protects employees in the normal course of performing their daily responsibilities. If this is not feasible due to budgetary constraints, cross checking procedures could be implemented and documented by the individual performing the procedure.

We recommend the sheriff separate the duties involved in receiving cash, preparing deposits, writing checks, posting to ledgers, preparing monthly bank reconciliations, and comparing financial reports to ledgers. However, if an adequate segregation of duties is not feasible, compensating controls should be implemented and documented by the individual performing the procedure.

*County Sheriff's Response: Lack of funding and personnel.*

**The sheriff did not deposit receipts daily:** This is a repeat finding and was in the prior year audit report as Finding 2018-004. The sheriff did not deposit receipts daily in 2019. 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, therefore, receipts were batched by deposit date rather than daily. The sheriff's office planned to prepare deposits on Mondays and Fridays unless daily receipts were considered significant. Ten deposits totaling \$47,591 were made during the month of October 2019, 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 risk of misappropriation of funds or inaccurate financial reporting.

The 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 regards to receipts, governmental officials handling public funds are required to make "Daily deposits into a federally insured banking institution." In addition, good internal controls dictate that receipts should be deposited intact on a daily basis.

We recommend the sheriff make deposits daily as required by DLG under the authority granted by KRS 68.210.

*County Sheriff's Response: Only during non-tax season this happens.*

**The sheriff did not abide by the fee pooling ordinance and materially misstated his quarterly report:** This is a repeat finding and was in the prior year audit report as Finding 2018-007. The Garrard County Sheriff deposited \$301,368 funds from the county into a fee bank account and disbursed these funds for payroll expenditures. The county fee pooling ordinance dictates that the county treasurer shall pay such payrolls. Also, these receipts and disbursements were not recorded on the sheriff's fourth quarter report, which serves as his financial statement, requiring material audit adjustments.

The sheriff did not have controls in place to ensure that he was abiding by the fee pooling ordinance and that his financial statement was materially accurate. A misstatement could result in an increased risk of uncorrected errors, theft, loss or misappropriated assets.

The county fee pooling ordinance dictates that the sheriff shall certify to the treasurer for payment of each bimonthly pay period, the names and hours of each employee of their respective offices who worked during such pay period and the treasurer shall pay such payrolls.

KRS 134.192(11) requires a complete statement of all funds received by his or her office for official services, showing separately the total income received by his or her office for services rendered, exclusive of his or her 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.

We recommend the Garrard County Sheriff abide by the county fee pooling ordinance. If he wishes to continue payroll disbursements through his fee account, he should consult with the county judge/executive and fiscal court to have the ordinance amended as needed. We further recommend the sheriff post all receipts and disbursements on his quarterly reports.

*County Sheriff's Response: To my understanding we abide by county policy. County policy was rewritten to clarify problems.*

**The sheriff did not properly classify employees as hourly or salaried:** This is a repeat finding and was in the prior year audit report as Finding 2018-005. The Garrard County Sheriff's Office paid its school resource officer and bookkeeper on a monthly basis. Payroll checks were issued around the 25th of each month. We were not able to support paycheck amounts by comparing payroll summary reports and timesheets. Both employees prepared a timesheet, however; timesheets included overtime which could not be verified reviewing of payroll summary reports.

According to the sheriff, a significant portion of the Garrard County Sheriffs' employees (school resource officer and bookkeeper) are being treated as salaried.

The sheriff's bookkeeper and school resource officer payroll summaries were not supported by timesheets for each employee. Payroll summaries did not include a breakdown of hours worked or include overtime incurred.

KRS 337.320(1) states, “[e]very employer shall keep a record of: (a) The amount paid each pay period to each employee; (b) The hours worked each day and each week by each employee; and (c) Such other information as the executive director requires.”

Good internal controls dictate that timesheets 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. (b)...Factors 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, Section 11 states that in order 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 “Under 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 sheriff contact the county attorney and/or the U.S. Department of Labor to obtain an opinion if any employee under his supervision can be considered a salaried employee.

*County Sheriff's Response: Employees clarified.*

**The sheriff's office does not have adequate internal controls over payroll:** This is a repeat finding and was in the prior year audit report as Finding 2018-006. Garrard County Sheriff's employees are separated into two groups for payroll purposes. The Garrard County Sheriff's Office prepares payroll for court security 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 our testing of payroll the following issues were noted:

- County Personnel Policy requires a lunch period to be taken. Documentation of a lunch period was not annotated on three timesheets.
- Bookkeeper and school resource officer timesheets were not footed correctly.
- Bookkeeper and school resource officer incurred overtime during period tested. Overtime incurred was not documented on payroll summary report which is used to issue payroll disbursements.
- One employee's timesheet was not signed by the employee and two timesheets were not signed by a supervisor.
- Payroll summary for administrative staff was not supported by accurate timesheets associated with pay period tested.

According to the sheriff, 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 sheriff is not in compliance with federal and state labor regulations or the county's personnel policy and procedure manual. The lack of controls over payroll have allowed employees to be underpaid. Additionally, timesheets under stated the hours for administrative employees.

KRS 337.320(1) states “[e]very employer shall keep a record of: (a) The amount paid each pay period to each employee; (b) The hours worked each day and each week by each employee; and (c) Such other information as the executive director requires.”

Good internal controls dictate that timesheets 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 manual 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 “Reasonable 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.”

KRS 337.355 states, in part, “[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 maintaining leave balances, requiring employees and supervisors to sign timesheets, ensure timesheets reflect actual hours worked, require all employees to maintain timesheets 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 law, and the Garrard County Personnel Policy and Procedures manual.

*County Sheriff's Response: Lack of funding and personnel.*

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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