



Auditor of Public Accounts
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Harmon Releases Audit of Owsley County Clerk's Fee Account

FRANKFORT, Ky. – State Auditor Mike Harmon today released the audit of the 2016 financial statement of Owsley County Clerk Shanna Oliver. 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 Owsley 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.

The audit contains the following comments:

The county clerk is not fulfilling her duties as an elected county official: This is a repeat finding and was reported in the prior year audit report as Finding 2015-001. The county clerk is not fulfilling her duties as an elected county official. 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. The county clerk is not meeting these requirements and other statutory requirements. We have noted the following instances of noncompliance, which are detailed in the subsequent findings:

- The county clerk did not submit quarterly reports to the Department for Local Government (DLG)

- The county clerk did not settle her account and remit excess fees to the fiscal court by March 15, 2017
- The county clerk did not present an annual budget or annual order setting maximum amount for deputies and assistants to the fiscal court for calendar year 2016
- The county clerk did not reconcile her official bank account to financial records
- The county clerk did not pay legal process taxes timely
- The county clerk did not pay affordable housing trust fund fees timely
- The county clerk did not pay deed transfer taxes timely
- The county clerk did not distribute delinquent tax payments to taxing districts timely
- The county clerk did not prepare franchise tax bills 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.

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 and the Department for Local Government (DLG).

County Clerk's Response: No response.

The county clerk did not submit quarterly financial reports to the Department for Local Government as required: This is a repeat finding and was reported in the prior year audit report as Finding 2015-002. The county clerk did not submit quarterly reports to the Department for Local Government's (DLG) state local finance officer. The county clerk is not fulfilling her duties as an elected county official (see Finding 2016-001) and does not have adequate controls in place to ensure financial reporting is timely, complete, and accurate. Failure to comply with these regulations resulted in a lack of availability of financial records to regulatory authorities and noncompliance with DLG reporting requirements. KRS 68.210 authorizes the state local finance officer to require officials from local governments to submit financial reports. Quarterly reports for fee officials are to be submitted by the 30th day following the close of the quarter in order to satisfy this requirement. We recommend the county clerk ensure quarterly reports are prepared

and submitted by the 30th of each month following the close of each quarter. This matter will be referred to the Department for Local Government (DLG).

County Clerk's Response: No response.

The county clerk failed to present financial information to the fiscal court as required: This is a repeat finding and was reported in the prior year audit report as Finding 2015-003. The Owsley County Clerk failed to submit required financial information to the fiscal court. The following items were not presented:

- Budget for calendar year 2016
- Annual order setting maximum amount for deputies and assistants for calendar year 2016

In addition, the county clerk failed to remit excess fees to the fiscal court by March 15. The county clerk did not establish adequate controls and procedures to ensure the required financial information is submitted to the fiscal court in a timely manner. The county clerk is aware of these requirements, but has failed to comply.

The county clerk is in violation of statutes governing fee officials. In addition, the fiscal court is not adequately informed of the financial activities of the county clerk's office, resulting in the limited ability to appropriately monitor said financial activity and make fully informed financial decisions for the county. The county clerk's failure to remit excess fees timely impacts the fiscal court's ability to provide services to citizens and taxpayers. Finally, we cannot determine if amounts paid to deputies and assistants were within limits set by the fiscal court.

KRS 68.210 outlines the requirements for fee official budgets by stating, "[t]he administration of the county uniform budget system shall be under the supervision of the state local finance officer who may inspect and shall supervise the administration of accounts and financial operations and shall prescribe and shall install, by July 1, 1985, a system of uniform accounts for all counties and county officials. He may require all officials of all local governments and local taxing districts to submit such financial reports as he may deem proper." Further, the *County Budget Preparation and State Local Finance Officer Policy Manual* states, "[t]he State Local Finance Officer requires that the fiscal court approve a calendar year budget for each fee office as a component of the county's budget preparation process by January 15 of each year."

The requirements for annual settlement and remittance of excess fees are outlined in KRS 64.152: "(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."

KRS 64.530(3) outlines the requirements for fiscal court approval of deputy and assistant salaries by stating, “[i]n the case of officers compensated from fees, or partly from fees and partly by salary, the fiscal court shall fix the reasonable maximum compensation that any officer except the officers named in KRS 64.535 may receive from both sources. The fiscal court may also fix the reasonable maximum amount that the officer may expend each year for expenses of his office. The fiscal court shall fix annually the reasonable maximum amount, including fringe benefits, which the officer may expend for deputies and assistants, and allow the officer to determine the number to be hired and the individual compensation of each deputy and assistant. Any revenue received by a county clerk in any calendar year shall be used exclusively for the statutory duties of the county clerk and budgeted accordingly. At the conclusion of each calendar year, any excess fees remaining shall be paid to the fiscal court pursuant to KRS 64.152.”

We recommend the county clerk implement policies, procedures, and controls to ensure compliance with statutes. Further, we recommend all required financial information be submitted to the fiscal court and this action is reflected in the fiscal court minutes.

County Clerk’s Response: No response.

The county clerk’s office lacks adequate segregation of duties: This is a repeat finding and was reported in the prior year audit report as Finding 2015-004. The county clerk’s office lacks adequate segregation of duties because all employees collect cash and process transactions and the duties of recording, reconciling, depositing, and reporting transactions are not separated enough to prevent errors, misstatements, and fraud. The small staff size contributes to inadequate segregation of duties. However, the county clerk has failed to implement compensating controls to offset the increased risk associated with inadequate segregation of duties. Without adequate segregation of duties, there is increased risk of undetected errors and fraud occurring. There is also less assurance that financial information is complete, accurate, and free of errors and misstatements. A strong and effective control system requires the duties of receiving, processing, recording, and reporting financial activity be delegated to separate individuals. When this separation is not possible due to a small staff size, there are compensating measure that can be implemented to offset this weakness in the control system in order to minimize the risk associated with inadequate segregation of duties.

Examples of compensating controls include, but are not limited to:

- Review of daily receipts and deposits by another employee
- Comparison of daily receipts and deposits to the receipts ledger by a designated employee
- Review of bank reconciliations by someone who did not prepare the reconciliation
- Comparison of ledgers to financial reports and supporting documentation by someone independent of the preparation process

These compensating controls should be documented by initialing and dating the supporting documentation by the person who completed the comparison or review. We recommend the county clerk segregate the duties of receiving, recording, depositing, reconciling, and reporting

financial activity when possible or implement and document compensating controls to offset the weakness in internal controls.

County Clerk's Response: No response.

The county clerk has not settled her 2016 fee account: The county clerk has not settled her 2016 fee account. There are numerous checks still outstanding for this account and numerous payments to taxing districts are due. In order to settle the account the county clerk should collect and pay the following:

Book Balance at 12/31/16:		\$	30,149
Collect:			
Charged Items-			
Attorney	\$	26	
Bank		1,110	
State		50	1,186
			<hr/>
Pay:			
State Treasurer-			
Affordable Housing Trust Fee		3,510	
Legal Process Tax		3,637	
Owsley County Fiscal Court-			
Deed Transfer Tax		3,598	
Clerk's Expense Allowance		3,600	
Matching Requirements for Clerk's Salary Underpayment (FICA and Retirement)		464	
Matching Requirements for Clerk's Expense Allowance (FICA and Retirement)		948	
Clerk's Salary Underpayment		1,866	
Refunds		477	
Reimbursements		63	
Computer Services		1,800	
Other		100	20,063
			<hr/>
Excess Fees Due Fiscal Court		\$	<u>11,272</u>

The county clerk is not performing her duties as an elected official, as discussed in Finding 2016-001. Additionally, the county clerk does not devote sufficient time to financial reporting and does not have adequate controls and procedures in place to ensure financial activity is recorded, reconciled, and reported timely. The county clerk is in violation of KRS 64.152 for failing to settle the 2016 fee account by March 15. Additionally, all taxing districts in the county have been deprived of much needed resources for a significant time period.

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 county clerk settle the 2016 fee account immediately. In addition, we recommend the county clerk design and implement policies and procedures to ensure all the financial activity of her office is recorded, reconciled, and reported timely. Finally, we recommend she ensure settlement is made with the fiscal court by March 15 each year.

County Clerk's Response: No response.

The county clerk did not prepare bank reconciliations and has numerous uncleared transactions at year end: This is a repeat finding and was reported in the prior year audit report as Finding 2015-006. The county clerk did not prepare bank reconciliations for the fee account. As of December 31, 2016, there are 40 transactions totaling \$13,184 that have not cleared the bank, some of which had been outstanding for more than 11 months. It appears the county clerk is writing checks but not delivering the checks to taxing districts in a timely manner.

The county clerk is not performing her duties as an elected official, as discussed in Finding 2016-001. Additionally, the county clerk does not devote sufficient time to financial reporting and does not have adequate controls and procedures in place to ensure financial activity is recorded, reconciled, and reported timely.

The risk of undetected fraud, errors, or other misstatements increases significantly when financial records are not prepared and reconciled timely. The numerous amount of uncleared transactions at year-end indicate the county clerk failed to properly remit checks to various taxing districts. Failing to provide payments to taxing districts in a timely manner causes these districts to face potential financial strain and hardship in providing services to citizens and taxpayers.

Under the authority of KRS 68.210, the state local finance officer prescribes minimum requirements for officials handling public funds, one of which is that monthly bank reconciliations be prepared. In addition, a strong internal control system requires timely reconciliations for all bank accounts and follow up on any items outstanding or uncleared for a significant time period.

We recommend the county clerk prepare timely monthly bank reconciliations. We also recommend the county clerk follow up on any transactions that are outstanding or uncleared for a significant time period and take appropriate action to clear the transactions. Finally, we recommend the county clerk ensure all payments to taxing districts are made timely.

County Clerk's Response: No response.

The county clerk did not pay legal process taxes timely: This is a repeat finding and was included in the prior year audit report as Finding 2015-007. The county clerk did not pay legal process taxes timely. The county clerk collects legal process taxes on various legal instruments recorded in local county clerk offices. The county clerk paid legal process taxes for January timely, but did not pay legal process taxes for February through December timely. The amounts due the state for legal process taxes are still outstanding as of December 31, 2016.

The county clerk is not performing her duties as an elected official, as discussed in Finding 2016-001. Additionally, the county clerk does not devote sufficient time to financial reporting and does not have adequate controls and procedures in place to ensure financial activity is recorded, reconciled, and reported timely. The county clerk was aware legal process taxes were to be distributed by the 10th of each month, but she did not comply with this requirement.

The county clerk owes \$3,637 to the state treasurer for legal process taxes collected during calendar year 2016, but was not remitted and is in violation of KRS 142.010. In addition, as outlined in the statute, failure to pay these fees timely can result in significant penalties and interest. Penalties and interest are not allowable expenditures from the official's fee account and must be paid personally.

KRS 142.010 outlines taxes imposed on legal processes and instruments and the applicable fees. Subsection 3 of the statute 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. (4) Any county clerk who violates any of the provisions of this section shall be subject to the uniform civil penalties imposed pursuant to KRS 131.180. In every case, any tax not paid on or before the due date shall bear interest at the tax interest rate as defined in KRS 131.010(6) from the date due until the date of payment.”

We recommend the county clerk immediately remit \$3,637 due to the state for legal process taxes for calendar year 2016 and implement effective policies and procedures to ensure all legal process tax payments are made in accordance with KRS 142.010 in the future. This matter will be referred to the Department of Revenue, Office of the Attorney General, and the Department for Local Government (DLG).

County Clerk's Response: No response.

The county clerk did not pay affordable housing trust fund fees timely: This is a repeat finding and was included in the prior year audit report as Finding 2015-008. The county clerk did not pay affordable housing trust fund fees timely. The county clerk collects affordable housing trust fund fees on various legal instruments recorded and indexed in the county clerk's office. The county clerk paid affordable housing trust fund fees for January timely, but did not pay affordable housing trust fund fees for February through December timely. The amounts due the state for affordable housing trust fund fees are still outstanding as of December 31, 2016.

The county clerk is not performing her duties as an elected official, as discussed in finding 2016-001. Additionally, the county clerk does not devote sufficient time to financial reporting and does not have adequate controls and procedures in place to ensure financial activity is recorded, reconciled, and reported timely. The county clerk was aware affordable housing trust fund fees were to be distributed by the 10th day following the end of the quarter in which these fees were collected, but she did not comply with this requirement.

The county clerk owes \$3,510 to the state treasurer for affordable housing trust fund fees collected during calendar year 2016, but was not remitted and is in violation of KRS 64.012. In addition, failure to pay these fees timely can result in significant penalties and interest. Penalties and interest are not allowable expenditures from the official's fee account and must be paid personally.

KRS 64.012 outlines the fees charged by county clerks and says, "(1)(b) The twelve dollar (\$12) fee imposed by paragraph (a) of this subsection shall be divided as follows: 1. Six dollars (\$6) shall be retained by the county clerk; and 2. Six dollars (\$6) shall be paid to the affordable housing trust fund established in KRS 198A.710 and shall be remitted by the county clerk within ten (10) days following the end of the quarter in which the fee was received. Each remittance to the affordable housing trust fund shall be accompanied by a summary report on a form prescribed by the Kentucky Housing Corporation."

We recommend the county clerk immediately remit \$3,510 due to the state for affordable housing trust fund fees for calendar year 2016 and implement effective policies and procedures to ensure all affordable housing trust fund fee payments are made in accordance with KRS 64.012 in the future. We will refer this matter to the Department of Revenue, the Office of the Attorney General, and the Department for Local Government (DLG).

County Clerk's Response: No response.

The county clerk did not pay deed transfer taxes timely: This is a repeat finding and was included in the prior year audit report as Finding 2015-009. The county clerk did not pay deed transfer taxes timely. The county clerk collects taxes on certain transfers of real property, retaining 5% commission and remitting the remainder to the county. The county clerk paid deed transfer taxes for January timely, but did not pay deed transfer taxes for February through December timely. The amounts due the county for deed transfer taxes are still outstanding as of December 31, 2016.

The county clerk is not performing her duties as an elected official, as discussed in Finding 2016-001. Additionally, the county clerk does not devote sufficient time to financial reporting and does not have adequate controls and procedures in place to ensure financial activity is recorded, reconciled, and reported timely. The county clerk was aware deed transfer taxes were to be distributed to the county treasurer every three months, but she did not comply with this requirement.

The county clerk owes \$3,598 to the county for deed transfer taxes collected during calendar year 2016 but not remitted. The county clerk is also in violation of KRS 142.050. Furthermore, failure to remit these taxes to the county timely puts unnecessary financial strain on the county, could impact financial decisions, and impair the ability to provide services to citizens and taxpayers.

KRS 142.050(4) states, "[t]he county clerk shall collect the amount due and certify the date of payment and the amount of collection on the deed. The county clerk shall retain five percent (5%) as his fee for collection and remit the balance every three (3) months to the county treasurer, who shall deposit the money in the county general fund."

We recommend the county clerk immediately remit \$3,598 due to the county for deed transfer taxes for calendar year 2016 and implement effective policies and procedures to ensure all deed transfer tax payments are made in accordance with KRS 142.050 in the future.

County Clerk's Response: No response.

The county clerk did not distribute delinquent tax payments to taxing districts timely: This is a repeat finding and was included in the prior year audit report as Finding 2015-010. The county clerk did not pay delinquent tax payments to the taxing districts timely. Delinquent taxes for April, May, and June were paid in August and delinquent taxes for August were paid in late September or October.

The county clerk is not performing her duties as an elected official (as discussed in Finding 2016-001). She has also failed to establish adequate controls and procedures to ensure delinquent taxes are paid timely. The county clerk knew the requirement to distribute delinquent tax payments to taxing districts by the 10th of each month, but failed to do so.

Taxing districts did not receive their share of delinquent taxes timely, which could impact services they provide as they are deprived of much needed resources while waiting on their distributive share of delinquent taxes.

KRS 134.126 states, “(3) [t]he county clerk shall report by the tenth day of each month to the department, the county treasurer, the sheriff, and the proper officials of the taxing districts. The governing body of a county may require the county clerk to report and pay on a more frequent basis if necessary for bonding requirements; however, the county clerk shall not be required to report and pay more frequently than weekly. (4) The county clerk shall allocate payments among the various entities entitled to a portion of the payment. The county clerk shall, at the time he or she makes the reports required by subsection (3) of this section: (a) Pay to the department for deposit in the State Treasury all moneys received due the state; (b) Pay to the county treasurer all moneys received due the county; (c) Pay to the authorized officers of the taxing districts the amount due each taxing district; and (d) Pay the amount of fees, costs, commissions, and penalties to the persons, agencies, or parties entitled thereto.”

We recommend the county clerk establish controls and procedures to ensure delinquent tax payments are made by the 10th of each month as required. This matter will be referred to the Office of the Attorney General and the Department for Local Government (DLG).

County Clerk's Response: No response.

The county clerk did not prepare franchise tax bills promptly: This is a repeat finding and was included in the prior year audit report as Finding 2015-011. The county clerk did not prepare franchise tax bills timely for the first half of calendar year 2016. The county clerk did prepare franchise tax bills in October 2016, which was five to nine months after the bills were received.

The county clerk is not fulfilling her duties as an elected official (as discussed in finding 2016-001), does not devote sufficient attention to the financial management practices, and failed to implement adequate controls and procedures to ensure franchise tax bills get prepared timely.

By not preparing the franchise tax bills and submitting them to the sheriff to collect, the county, school, and other taxing districts did not receive the tax revenues they were entitled to. These tax districts rely on the timely receipt of tax revenues. The county clerk's failure to perform this duty results in the taxing districts' budgets and cash flows being negatively affected.

The county clerk should prepare franchise bills upon receipt of the state assessment certification and promptly give to the sheriff to mail. KRS 133.220(2) requires the county clerk to prepare tax bills and, in part, states "the county clerk shall prepare for the use of the sheriff or collector a correct tax bill for each taxpayer in the county[.]" Furthermore, KRS 133.220(3) states that "[t]ax bills prepared in accordance with the certification of the department shall be delivered to the sheriff or collector by the county clerk before September 15 of each year."

We recommend the county clerk implement procedures and controls to ensure franchise tax bills are prepared promptly after receiving the state assessment certification from the state and are immediately presented to the sheriff to be mailed and collected. This matter will be referred to the Department of Revenue, the Office of the Attorney General, and the Department for Local Government (DLG).

County Clerk's Response: No 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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