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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 2020 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 Owsley County Clerk did not comply with Department for Local Government (DLG) requirements regarding approval and submission of annual budget, quarterly financial reports, and annual settlement: This is a repeat finding and was included in the prior year audit report as Finding 2019-001. The county clerk presented her budget and annual order setting maximum salary for deputies and assistants to the fiscal court for calendar year 2020; however, it was not presented in a timely manner as required by the Department for Local Government (DLG) guidelines. Furthermore, the county clerk has not submitted her annual settlement and excess fees to the fiscal court for the calendar year ending December 31, 2020, nor has she submitted the quarterly financial reports and annual settlement to DLG as required.

Per the county clerk, the employee who performed the function of creating and completing the quarterly financial report prior to the county clerk reviewing was laid off during COVID-19 and upon returning to work was busy trying to catchup on various reports while still working the front line on a daily basis. The deadline for submitting the reports came and went and therefore the county clerk thought it was too late to submit the reports.

The lack of compliance with KRS's and DLG reporting requirements has led to the fiscal court not being 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.

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 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.

In addition, the state local finance officer also requires the quarterly report to be submitted to their office no later than 30 days following the close of the quarters ending March 31, June 30, September 30, and December 31.

KRS 64.152(1) states, "[i]n 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..." KRS 64.152 (2) states "At the time of filing the statement required by subsection (1) of this section, the county 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.

We recommend the county clerk comply with the applicable KRS's and DLG's manual by submitting her annual budget, quarterly financial reports, and annual settlement to DLG as required. In addition, we recommend the county clerk submit her annual settlement and excess fees accurately and completely to the fiscal court no later than March 15.

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

The Owsley County Clerk is not remitting fees in compliance with Kentucky Revised Statutes: This is a repeat finding and was included in the prior year audit report as Finding 2019-002. During calendar year 2020, it was noted that the payments for the following items were not remitted in compliance with the corresponding KRS.

The county clerk collects motor vehicle property tax receipts which are to be paid to the state, county, and districts on or before the tenth of the following month; however, for calendar year 2020 the payments and reports were not submitted timely. Eight of 12 payments due to the state, county, and districts were paid late as noted below:

- January-July checks were not issued/delivered to the payee timely. Payments for March-June were not paid until July 22, 2020.
- October checks were issued on November 12, 2020 (two days late).

The county clerk collects delinquent tax receipts which are to be paid to the state, county, and districts on or before the tenth of the following month; however, for calendar year 2020 the payments and reports were not submitted timely. April had no delinquent tax collections leaving 11 monthly payments due to the state, county, and districts. Six of the 11 payments due to the state, county, and districts were paid late as noted below:

- January, March, May, June, July, and August checks were not issued/delivered to the payee timely. Payments for March, May, and June were all paid on July 27, 2020.

The county clerk collects legal processing receipts which are to be paid to the state on or before the tenth of the following month; however, for calendar year 2020 seven of 12 payment due to the state were paid late as noted below:

- January, March-July, and September checks were not issued/delivered timely. Payments for March-July were not paid until September.

The county clerk collects affordable housing receipts which are to be paid to the state by the tenth of the month after the quarter ends; however, for calendar year 2020 the county clerk made monthly payments instead of quarterly payment for all four quarters. Since the payments are not due until the tenth of the month after the quarter ends, some of the quarterly payments were made on time and some were late. Of the 12 payments made, five payments were not made timely with March through June payments being dated September 9, 2020 and September payment being dated October 13, 2020, or three days late.

The county clerk collects deed transfer tax receipts which are to be paid to the county by the tenth of the month after the quarter ends; however, for calendar year 2020 the first and second quarters were not paid timely.

In addition, some checks are not being issued and released timely as there were 22 additional liabilities checks issued after February 2020.

Due to the lateness of the payments due to the state, the county clerk has received numerous fees, penalties, and interest notifications from the state going back to 2013 and continuing into 2020. The total presently known due to the state in fines, penalties, and interest is \$36,902. Since fees, penalties, and interest is not an allowable office expense, the county clerk will be personally responsible for the payment of these bills.

The county clerk stated she did not have adequate controls and procedures in place to ensure disbursements were made timely; however, for the later part of calendar year 2019 she stated she had made significant changes to her procedures to ensure compliance and disbursements are made timely. However, due to COVID-19 parts of calendar year 2020 was not in compliance. She further stated that since her employees were laid off during part of 2020, due to COVID-19, that

this had caused a setback in implementing the new control and procedures that were developed in calendar year 2019.

The state, county, and districts did not have all the funds they budgeted for and may have not been able to provide services to tax payers due to lack of funding. In addition, the county clerk is not in compliance with Kentucky Revised Statutes (KRS) which allow for penalties and interest be assessed for late payments.

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 him for the preceding month, less the collection fee of the county clerk, which shall be deducted before payment to the depository. The county clerk shall be required to deposit state collections in a manner consistent with procedures established by the cabinet for the prompt payment to the state of other moneys collected by the county clerk.”

KRS 134.126(3) states, “[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.”

KRS 64.012(1)(a) outlines the fees charged by county clerks and says, “2. The thirty-three dollar (\$33) fee imposed by this subsection shall be divided as follows: a. Twenty-seven dollars (\$27) shall be retained by the county clerk; and b. 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.”

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.”

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.”

KRS 131.180(1) states. “[a]ny taxpayer who files any return or report after the due date prescribed for filing or the due date as extended by the department shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty equal to two percent (2%) of the total tax due for each thirty (30) days or fraction thereof that the report or return is late. The total penalty levied pursuant to this subsection shall not exceed twenty percent (20%) of the total tax due; however, the penalty shall not be less than ten dollars (\$10).”

KRS 131.183(1)(a) states, “[e]xcept for the addition to tax required when an underpayment of estimated tax occurs under KRS 141.044 and 141.305, all taxes payable to the Commonwealth not paid at the time prescribed by statute shall accrue interest at the tax interest rate.”

We recommend the county clerk pay over receipts timely to ensure compliance with all KRS and to prevent penalties and interest payments due for late payments. We further recommend the county clerk settle late fees, fines, and interest due to the Department of Revenue.

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

The Owsley County Clerk did not deposit funds timely: This is a repeat finding and was included in the prior year audit report as Finding 2019-003. The county clerk did not process receipts timely nor did her office make daily deposits. Test of daily receipts for the week of December 7 through December 12 noted the following issues:

- December 7, 2020 receipts included five checks. Two checks were dated over a week prior to processing with dates of October 16 and November 6.
- December 8, 2020 receipts included ten checks. One check was dated over a week prior to processing with a date of August 13.
- December 9, 2020 receipts included four checks. Two checks were dated over a week prior to processing with dates of September 18 and November 19. In addition, these receipts were not deposited until December 22, 2020.
- December 10, 2020 receipts included 11 checks. Two checks were dated over a week prior to processing with dates of November 9 and November 12. In addition, these receipts were not deposited until December 22, 2020.
- December 11, 2020 receipts included five checks. One check was dated over a week prior to processing with a date of October 22. In addition, these receipts were not deposited until December 22, 2020.

The county clerk said she did not have adequate controls and procedures in place to ensure deposits were made daily and all mail was processed timely. She further stated she has implemented a new process to ensure items are being processed in a timely manner and the deposits are being made daily. Inadequate controls over deposits increase the risk that undetected fraud, errors, and

misstatements will occur. Delaying deposits also increases the risk that funds will be lost, stolen, or otherwise misappropriated.

The Department for Local Government (DLG) has issued standards regarding “Handling Public Funds Minimum Requirements Pursuant To KRS 68.210 for All Local Government Officials (And Employees)”. One of the requirements is “[d]aily deposits intact into a federally insured banking institution. (KRS 68.210)”. Additionally, strong internal controls require all payments be deposited timely and on the date received.

We recommend the county clerk comply with KRS 68.210 regarding deposits. We further recommend the county clerk ensure all payments are deposited timely by establishing effective internal controls over receipts and deposits.

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

The Owsley County Clerk’s Office does not have adequate segregation of duties: This is a repeat finding and was included in the prior year audit report as Finding 2019-004. The Owsley County Clerk and her employees all collect cash and process transactions. In addition, the Owsley County Clerk prepares the daily deposits, daily, weekly, and monthly reports as well as writes and signs disbursement checks and although a receipt/disbursement ledger is prepared by another employee there is no documentation of a review nor does it appear to be completed in a timely manner.

According to the county clerk this lack of segregation of duties is a result of a limited budget; which restricts the number of employees the county clerk can hire and delegate responsibilities to. Without adequate segregation of duties, there is an increased risk of misappropriation of assets, errors, and inaccurate financial reporting to external agencies, such as the Department for Local Government (DLG).

The segregation of duties over various accounting functions such as preparing deposits, preparing daily checkout sheets, and issuing cash receipts is essential for providing protection from asset misappropriation and inaccurate financial reporting. Good internal controls further dictate that duties of preparing deposits, preparing checks, signing checks, posting to ledgers, and reconciliations of ledgers to bank accounts be segregated. Additionally, proper segregation of duties protects employees in the normal course of performing their daily responsibilities.

We recommend the Owsley County Clerk segregate duties over receipts, report preparation, bank reconciliations, and disbursements. If segregation of duties is not feasible due to lack of staff, the Owsley County Clerk should implement compensating controls to help mitigate any weakness. These compensating controls can and should be documented by initialing and dating the supporting documentation by the person who completed the comparison or review.

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

The Owsley 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 2019-005. The county clerk received 22

notifications from the Department of Revenue regarding certifications for 2020 franchise bills. Eight of the 22 notifications were billed and turned over to the sheriff in a timely manner, two were under \$10 and therefore not billed. Ten were issued by the Department of Revenue between December 27, 2019 and February 3, 2020; however, these bills were not delivered to the sheriff until September 15, 2020. The remaining certifications were issued by the Department of Revenue on October 22 and November 9, 2020; however, the clerk's office did not prepare bills for these certifications until December 10, 2020.

The clerk stated she has now acquired a computerized program to help expedite the process. Since the county, school district, sheriff, and other taxing districts rely on franchise taxes to create their budgets and meet the associated expenses, not issuing franchise taxes bills timely could have a negative cash flow effect on the districts or sheriff.

In accordance with KRS 133.220, the county clerk is the local official responsible for the preparation of property tax bills each year. Public service (franchise) and other centrally assessed companies are handled in Frankfort by the Division of State Valuation, Public Service Branch, within the Department of Revenue. Assessments for these companies can get quite complicated and they can be finalized at any time during the year. This means that the county clerk's office will likely receive assessment certifications throughout the year. When these certifications are received by the clerk, a franchise property tax bill needs to be generated as soon as possible.

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 recommend they are immediately presented to the sheriff to be mailed and collected.

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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