



Auditor of Public Accounts
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Edelen Releases Audit of Former Harlan County Sheriff's Office

FRANKFORT, Ky. – State Auditor Adam Edelen today released the audit of the 2012 financial statement of former Harlan County Sheriff Marvin Lipfird. 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.

Recent changes in auditing standards require the auditor's letter to communicate whether the financial statement presents fairly the revenues, expenditures and excess fees of the former Harlan County Sheriff in accordance with generally accepted accounting principles in the United States. The report found that the financial statement of the Sheriff 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 non-compliance with laws, regulations, contracts and grants. The auditor must also comment on material weaknesses involving the internal control over financial operations and reporting.

The audit contains the following comments:

The former Sheriff's office lacked adequate segregation of duties over receipts, disbursements, and bank reconciliations. While reviewing the former Sheriff's internal control procedures, we identified a lack of adequate segregation of duties over receipts, disbursements, and bank reconciliations. These control deficiencies existed because the bookkeeper's responsibilities included preparing daily checkout sheets, posting daily checkout sheets to the receipt ledger, preparing and posting expenditures to the ledger, signing checks, preparing the quarterly reports, and reconciling the ledgers to bank records. Although the former Sheriff had implemented some compensating controls to help offset this weakness, those controls

were not effective enough to prevent or detect errors and misstatements in a timely manner, such as disallowed expenditures in comment #2012-03.

A proper segregation of duties over accounting duties is essential for preventing asset misappropriation and/or inaccurate financial reporting. In addition, proper segregation of duties protects employees in the normal course of performing their daily responsibilities. Budget restrictions may limit the number of staff the Sheriff can hire. As a result, it may not be feasible to segregate accounting duties to different employees. In this situation, strong oversight over receipts, disbursements, and reconciliations should be performed by an employee not currently performing any of those processes. The former Sheriff should have segregated duties or implemented effective compensating controls to offset this weakness. If compensating controls were implemented, the former Sheriff should have documented his oversight on the appropriate source document. The following are examples of other controls the former Sheriff could have implemented:

- The former Sheriff could have periodically recounted and deposited cash receipts. This could have been documented by initialing the daily checkout sheet and deposit ticket.
- The former Sheriff could have examined checks prepared by the bookkeeper and compared to proper documentation. This could have been documented by initialing the supporting documentation.
- The former Sheriff could have examined all credit card statements and verified each charge with the corresponding receipt.
- The former Sheriff could have received bank statements unopened and reviewed the statements for any unusual items prior to giving them to the individual performing the bank reconciliations.

Former Sheriff's response: No response.

The former Sheriff should have improved internal controls over budgeting procedures to comply with resolution approved by the Fiscal Court and KRS. The Harlan County Sheriff fee pools with the Harlan County Fiscal Court. On May 21, 2009, the Fiscal Court passed a resolution allowing the Sheriff to fee pool. This resolution permits the Sheriff to spend up to \$3,000 per month for a total of \$36,000 a year from his official fee account. During calendar year 2012, the former Sheriff spent \$53,720 in allowable expenditures from his official fee account for vehicle maintenance and repairs, office material and supplies, uniforms, gasoline, training, transports, equipment, and other miscellaneous items. As a result, the former Sheriff overspent the amount allowed per the resolution by \$17,720.

Further, although the former Sheriff submitted a budget to the Fiscal Court for calendar year 2012, the approved budget was for anticipated receipts only, and did not include budgeted expenses. Per Department of Local Government's County Budget Preparation and State Local Finance Officer Policy Manual, "the 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 15th of each year." KRS 68.210 states "the 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 a system of uniform accounts for all counties and county officials."

The former Sheriff should have monitored his budget and complied with the terms of the resolution by only paying expenditures directly out of his fee account that he was authorized to pay. The Fiscal Court should have paid all other expenditures.

Former Sheriff's response: No response.

The former Sheriff should not spend fee receipts or drug account funds on disallowed expenditures. During our review of expenditures, auditors noted the former Sheriff disbursed funds from the official fee account and the drug account for numerous disallowed expenses. Disbursements for personal expenses, charges unrelated to the Sheriff's office, purchases not properly supported by receipts, late payment fees, over limit fees, and interest are summarized below:

	<u>Fee Account</u>	<u>Drug Account</u>
Not Reasonable or Necessary:		
Food Items, including alcohol	\$ 1,138	\$
Computer Tracking Software	128	
Hotel (personal, no show & upgraded room charges)	935	
Dating Website Subscription	160	
Massage	90	
Personal Clothing (Old Navy)	92	
Baby Items	135	
Unused & Unauthorized Cell Phone Expenses	474	4,203
Total Not Reasonable or Necessary:	3,152	4,203
No Documentation:	3,939	519
Inadequate Documentation:	1,710	
Late Fees, Over Limit Fees & Interest:	70	5
Total Disallowed Expenditures	<u>\$ 8,871</u>	<u>\$ 4,727</u>

In Funk v. Milliken, 317 S.W. 2d 499 (Ky. 1958), Kentucky's highest court ruled that county fee officials' expenditures of public funds will be allowed only if they are necessary, adequately documented, reasonable in amount, beneficial to the public, and not primarily personal in nature.

The former Sheriff should have avoided expenses that did not meet the Funk v. Milliken test. We recommend that the former Sheriff personally reimburse the 2012 official fee account a total of \$8,869 and the drug account a total of \$4,727 for these disallowed expenses. Once the reimbursements are made, the former Sheriff should then pay any additional excess fees to the Fiscal Court.

Former Sheriff's response: No response.

The former Sheriff cannot account for \$9,378 in drug buy monies. The former Sheriff maintained an official drug account which is used for law enforcement purposes. Funds deposited into the drug account are proceeds generated as result of criminal drug cases that have been decided by the court and a court order has been signed by the judge specifying that the

Sheriff may use the forfeited funds for “direct law enforcement purposes.” Disbursements made from the drug account may be for drug buys, or for other law enforcement expenses. The former Sheriff’s office cashed a check at the local bank and money was advanced to the former Sheriff’s detectives for drug buys. Also during the calendar year, detectives were permitted to withdrawal funds from the ATM.

We have determined that \$8,900 of drug buy money cannot be accounted for based on a comparison of checks cashed and ATM withdrawals for cash for detectives to use for drug buys. Please note, \$8,400 of these funds were previously reported in the former Sheriff’s 2011 fee audit. The additional \$500 is a check written to the former Harlan County Sheriff on December 10, 2012 that was cashed and has the former Sheriff’s and bookkeeper’s endorsement on the back of the check. In addition, no documentation was provided for the former Sheriff’s receipt of \$400 from a deputy. Documentation did not specify why these funds were released to the former Sheriff. We noted unused drug buy monies subsequently deposited by two deputies was short by a net amount of \$80 and there was no documentation of reimbursement to the former Sheriff from a deputy for \$78 for equipment and food.

These unaccounted for monies are the result of weak internal controls in which documentation is not retained, and reconciliations are not performed of cash withdrawn to cash issued to detectives. The former Sheriff should have improved internal controls over drug buy money withdrawn from the drug account by requiring documentation be retained for all activities. The former Sheriff should have ensured reconciliations of bank withdrawals to detectives’ monthly expense reports were performed. We will refer this shortage to the Kentucky State Police for further investigation.

Former Sheriff’s response: No response.

Proper documentation should be maintained to support the value of forfeited assets. As a result of criminal prosecutions, on October 9, 2009, March 31, 2011, and December 1, 2011, the Sheriff’s office was awarded by court order multiple pieces of personal property seized by the Sheriff’s office through drug investigations. The court orders granting this forfeited property to the Sheriff’s office state forfeited items are “to be sold or used by the Harlan County Sheriff’s Office” pursuant to KRS Chapter 218A, “and that fifteen (15%) of the value thereof is to be paid to the Commonwealth’s Attorney’s Office” pursuant to KRS Chapter 218A.” On December 21, 2012, the Sheriff’s office wrote a check to the Commonwealth Attorney for \$6,000 for the estimated value of assets awarded from the aforementioned forfeiture orders. Instead of selling the forfeited items, the former Sheriff stated him and the Commonwealth’s Attorney made a verbal agreement for the amount they believed was 15% of the fair value of the items. No written documentation has been provided to auditors to support this agreement, or to present the method used to determine the fair value of \$6,000. Therefore, there is not adequate support that the amount remitted to the Commonwealth’s Attorney is correct. The Sheriff’s office has not used nor sold the assets; instead, some items are housed in storage lockers. Forfeited property included several vehicles, several ATVs, small electronics, and various tools.

The Sheriff’s office should adhere to the conditions of all court orders. The former Sheriff should have followed the directives of the court orders, agreements made with the Commonwealth’s Attorney should have been in writing, and proper documentation should have

been maintained to support the value of forfeited assets. This documentation is necessary for forfeited assets held by the Sheriff for use, as well as assets sold in accordance with court orders.

Former Sheriff's response: No response.

Drug buy money should not be loaned from the former Sheriff's official tax account. The former Sheriff's 2012 tax account loaned \$1,500 of cash to a detective for drug buy purchases. On November 28, 2012, the Sheriff's bookkeeper recorded three cash advancements of \$500 each, from the official tax account to a Sheriff's office detective for drug buy money. The bookkeeper stated these advancements were made because the bank was closed and the ATM would not release such a large amount of cash. Cash of \$1,000 was paid back to the tax account on December 8, 2012 and another \$500 was repaid on December 11, 2012, for a total of \$1,500.

KRS 64.850 states an official should not "withdraw public funds for any purpose other than that for which they were received and deposited." The drug account and official tax account are established for separate purposes and should stand alone. Funds should not be loaned from one account to another, as these loans would have prevented the tax deposits from being timely and intact. Further, the delay between the initial cash advancements and the dates when cash was repaid to the tax account was unnecessary. The former Sheriff should have discontinued the practice of loaning funds between accounts.

Former Sheriff's response: No response.

Cell phone expenditures have resulted in disallowed expenditures totaling \$4,676. During calendar year 2012, the Harlan County Sheriff's office paid for 12 cell phones of which two were prepaid phones for drug investigation. Of the 10 cell phones with cell phone providers, the Sheriff's office identified Sheriff's office employees as users for four cell phone numbers, but was unable to identify users for the remaining six lines. Review of the usage of the six unidentified user lines noted that five of the lines are not being used. Charges for the unused lines totaled \$3,792 for monthly contract costs for calendar year 2012. The charge for the one line being used was \$848 for monthly contract costs plus \$36 for an activation fee. As a result, the Sheriff's office incurred a total of \$4,676 for unused or unauthorized cell phone charges, which are considered disallowed expenditures. \$4,203 of these expenses were paid from the drug account, and \$473 was paid from the former Sheriff's fee account.

These charges appear to be the result of a lack of monitoring by management. Some cell phone billings were paid by credit card, and some were paid from the drug fund/account. The Sheriff's office was unable to provide copies of two months of cell phone billing statements paid by credit card.

In Funk v. Milliken, 317 S.W. 2d 499 (Ky. 1958), Kentucky's highest court ruled that county fee officials' expenditures of public funds will be allowed only if they are necessary, adequately documented, reasonable in amount, beneficial to the public, and not primarily personal in nature.

The former Sheriff should have improved internal controls over cell phone expenditures to ensure services provided were reasonable and necessary. Cell phones should only be provided to authorized users and any personal use of department funded cell phones should have been reported

to the County Treasurer for reporting purposes. The former Sheriff should have developed a written cell phone usage policy and should personally repay \$4,203 to the drug account and \$509 to the fee account.

Former Sheriff's response: No response.

The former Sheriff should have ensured billings for school resource officers were accurate and submitted timely to the Harlan County Board of Education. The Harlan County Sheriff's office provides school resource officers for security purposes for the Harlan County Board of Education (Board), billable by quarter. Prior to April 2011, the Sheriff's Office prepared quarterly billings for the services provided and submitted billings to the Board. In turn, the Board remitted payment to the Fiscal Court. The Sheriff's office has continued to provide security services since April 2011; however, no billings were prepared or submitted to the Board for April 2011 through June 2013. Although the Sheriff's office and the Board had previously entered into written agreements outlining security services and terms of payment, no agreements existed for the period August 2009 through July 2013. The invoice for January, February, and March 2011 billed the Board at \$10,000 per month, or \$30,000 per quarter for two deputies. In the absence of a written agreement, or unpaid bills, we are unable to determine the amount of revenues lost by the Fiscal Court.

All agreements should be written and the terms of all agreements should be monitored regularly for compliance. The absence of a written agreement between the parties and a breakdown of communication between the Sheriff's office and the Board, and the Fiscal Court has resulted in ineffective oversight.

We recommend the Sheriff's office work with the Fiscal Court to ensure billings prepared by the County Treasurer are accurate and submitted timely to the Board. The Sheriff's Office and the Board should enter into a written agreement to detail the security services provided and the terms of the payment. The former Sheriff should also consult with the County Attorney to determine if the Fiscal Court could collect payment for the unbilled period of 21 months.

Former Sheriff's response: No response.

Vehicles used for undercover drug investigations were not properly registered. The Sheriff's office maintains seven vehicles for undercover drug investigations. These vehicles were registered to fictitious individuals at the Harlan County Clerk's office. Since no statutes or other legal authority allow a Sheriff to title motor vehicles under an assumed name, presumably to protect the identity of the undercover officer or agency, the former Sheriff was not authorized to do so. In addition, statutes clearly identify penalties for any persons who knowingly provide false information, to be entered into the AVIS system, to produce a title. If the former Sheriff believed a need existed for unidentifiable owners' names, the former Sheriff should have contacted the Kentucky Transportation Cabinet for guidance. The former Sheriff should have discontinued the practice of registering vehicles used for undercover drug investigations in fictitious names at the local County Clerk's office. We will refer this finding to the Kentucky Transportation Cabinet.

Former Sheriff's response: No response.

The former Sheriff should have strengthened internal controls over timesheets and pre-approved overtime request forms. All employees of the Sheriff’s office report hours worked on an office-wide spreadsheet for each pay period. From this spreadsheet, the bookkeeper calculates regular and overtime hours worked, and prepares an electronic spreadsheet that is submitted to the Treasurer’s office for payroll processing. Our review of the manual spreadsheets maintained in the Sheriff’s office determined all employees do not always sign the spreadsheet authorizing hours worked. Further, it is the policy of the Sheriff’s office that all overtime be pre-approved by a supervisor, and documented by a signed overtime request form. However, not all overtime hours earned and paid were properly supported by an overtime request form.

KRS 337.320(1) states “every employee 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.” The overtime policy per the Harlan County Sheriff’s Office policy and procedure manual for non-exempt employees states, “All overtime work must receive the prior authorization of the employee’s supervisor. Failure to work schedule overtime or overtime worked without prior authorization from the supervisor may result in disciplinary action, up to and including termination of employment.”

Effective internal controls require time records to be signed by all employees, certifying accuracy and completeness. Procedures for pre-approved overtime authorizations establish oversight for payroll expenditures. The former Sheriff should have strengthened internal controls over timesheets to ensure all employees sign time records. In addition, the former Sheriff, or a designee, should have verified all overtime hours earned were properly supported by a pre-approved overtime request form prior to payment.

Former Sheriff’s response: No response.

The sheriff’s responsibilities include collecting property taxes, providing law enforcement and performing services for the county fiscal court and courts of justice. The sheriff’s office is funded through statutory commissions and fees collected in conjunction with these duties.

The audit report can be found on the [auditor’s website](#).

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