



Auditor of Public Accounts
Adam H. Edelen

FOR IMMEDIATE RELEASE

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Edelen Releases Audit of Jefferson Clerk's Fee Account

FRANKFORT, Ky. – State Auditor Adam Edelen today released the audit of the 2013 financial statement of Jefferson County Clerk Barbara Holsclaw. State law requires the auditor to conduct annual audits of county clerks and sheriffs.

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 Jefferson County Clerk in accordance with generally accepted accounting principles in the United States. The report found that the financial statement of the Clerk 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 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 County Clerk should expend funds for allowable purposes only. In the fiscal year 2011 audit, auditors noted \$3,845 in expenditures that were not considered allowable expenses of a County Clerk's office. These expenditures were personal in nature or not supported with adequate documentation. These expenditures have not been reimbursed to the fee account by the County Clerk. We recommend the County Clerk reimburse the official fee account \$3,845 for disallowed expenditures from the prior year.

County Clerk's response: Last year, the Jefferson County Clerk's Office provided a response to the same comment as this comment. The 2011 and 2012 Audits erroneously listed two expenditures as unnecessary and recommended reimbursement. The 2013 Audit continues to list the exact same expenditures, albeit, one year older. The Clerk's Office disagrees that providing people and equipment to polling places is not a necessary part of its mandate.

The Clerk's Office again stresses that those expenditures (which were for gas for vehicles used for Election Day activities to get people and equipment to and from polling places and AAA membership

for towing services and repairs) had passed every previous audit and were completely necessary and proper. There was never a question that they were necessary for performing the constitutionally required work of the Clerk's Office. Additionally, these expenditures had been approved by the Commonwealth of Kentucky Finance and Administration Cabinet, County Fees Branch and Louisville Metro Government which reimbursed the Clerk's Office for some of the expenditures as election costs. Funk v. Milliken allows Louisville Metro Government to approve such categories of reasonable official expenses. Furthermore, as explained last year, the expenditures were proper expenditures that did not come from the Fee Account and thus were not subject to the Audit which is title by the State Auditor's Office as the "Fee Account Audit."

As stated last year, the Clerk's Office examined different procedures for purchasing gas and contracted for towing services or repairs on an as-needed basis. With those changes, the same expenditures were dealt with in a manner acceptable to the auditors. Because the 2011 expenditures were approved when made and spent entirely on the work of the Jefferson County Clerk's Office, they were necessary, allowable and proper and will not be reimbursed.

This issue was also reviewed by the Jefferson County Attorney in 2012, and the matter concluded in favor of the JCCO.

Auditor's reply: In its response, the Clerk's office indicates that the expenditures noted in the finding were "erroneously" listed as unnecessary in 2011 and that they have passed every previous audit. The APA disagrees with this characterization, as the expenditures in question were subject to standard audit procedures and correctly identified as unallowable in the 2011 audit. Further, these expenditures were not discovered in previous years' audits. The Clerk's office response states that some of the expenditures were reimbursed by Louisville Metro Government as election costs. However, the prepaid gas cards and the AAA memberships were purchased through the Fee Account and regardless of whether the expense was reimbursed, there is an expectation that election expenses, like all expenses of the Clerk, are necessary and reasonable to carry out the functions of the office. Further, the Clerk has a responsibility to ensure that internal controls exist to reduce the risk of fraud or abuse.

The 2011 finding identified the Clerk's office did not maintain sufficient documentation to show that the gas cards were used for their intended purposes and that the AAA memberships for employees were predominantly personal in nature, as they provided a personal benefit to the employees. For this reason, the expenditures will continue to be included in audit reports as unallowable until reimbursed by the Clerk.

As stated in the Auditor's Reply to Comment 2012-01, we disagree with the statement in the Clerk's response that the Jefferson County Attorney "concluded in favor of the JCCO." Please refer to the State Auditor's response to the Jefferson County Attorney in Appendix B.

The Jefferson County Clerk's election center should not provide election services for private entities. In the 2011 audit, it was noted that the Clerk's Election Center provided election service, for a fee, to private entities, such as unions and churches. The activity continued in 2012 and 2013. This service included preparation of ballots, delivery of the publicly owned voting machine to the private entity's location, monitoring of the private entity's election by a deputy clerk, tallying the votes and providing election results. By continuing this activity, the Clerk is allowing the use of public equipment and personnel for a private entity and is charging a fee for a service not authorized by statute. Per KRS 64.410, a clerk may not charge or receive a fee for a service unless that fee is expressly authorized by statute. Further, the use of public equipment and personnel for a private entity is prohibited by Ky. Const. Sec. 171 according to OAG 84-190. We recommend the Clerk comply with

Kentucky statutes and the Kentucky Constitution and discontinue providing election services to private entities.

County Clerk's response: Last year, the Jefferson County Clerk's Office provided a response to an exit conference comment almost identical to this comment. The Jefferson County Clerk provides election services as required by KRS Chapter 117 and complies with all requirements of Kentucky law in doing so. These services are not performed using fees from the Clerk's Fee Account which is the account examined in this Audit or do they fall under KRS Chapter 64 or Ky. Const. 171.

This practice has occurred for over 50 years. Many County Clerks offer the same services. The provision of election services provide a public service in educating voters, demonstrating the integrity of the voting system and providing valuable training and testing for election personnel and equipment. Use of the machines in election introduces potential voters to the process. It is such a good learning tool that the Kentucky State Board of Elections strongly promotes using voting machines and election personnel for mock elections for school children.

The voting machines are not paid for out of the Clerk's Fee Account but rather are purchased by Louisville Metro Government under KRS 117.377. The entities requesting the service reimburse the Clerk's Office for the equipment and for any hours that any Clerk's Office employee spends on the election. If the entities requesting the services did not reimburse the Clerk's Office, there is no doubt that this audit would criticize that practice as well.

The Audit's reliance to Kentucky Constitutional Section 171 is misplaced as that section covers the use of taxes for public purposes and no taxes are collected in this case. The Audit's citation to OAG 84-190 is puzzling because it supports the Clerk's Office use of the equipment as it holds that using county property on private land is permissible if it serves a public purpose. Voter education, election promotion and training are public purposes, according to OAG 92-87. In that opinion, the Attorney allowed a public office to donate public money to a charitable organization for voter education. OAG 92-87 states "We have no hesitation in concluding that increasing voter education, participation, and registration represent a valid public purpose." OAG 86-23 opines that a public entity may benefit a private entity if the purpose is a public one.

This matter was also reviewed by the Jefferson County Attorney year before last and the matter concluded in favor of the Clerk's Office.

Auditor's Reply: While using Clerk's deputies and voting machines to conduct mock elections for school children at schools is a valid, educational use of personnel and equipment, that activity is not the activity at issue in the audit comment. The use of Clerk's deputies and equipment for private companies, unions, and churches to conduct actual, not mock, elections for those entities is the activity at issue. Providing these election services for private organizations does not constitute a public purpose, such as voter education. It only benefits those private organizations receiving the services. Further, because deputies' salaries are paid from the fee account and the fees paid by the private entities are processed through the Clerk's accounting system, the activity is subject to the fee account audit and should comply with all applicable laws and regulations. In addition, whether the voting machines were purchased by the Clerk's account directly or by Louisville Metro Government, they are considered to be public equipment and are subject to the same restriction on use for private purposes.

APPENDIX B: STATE AUDITOR LETTER IN REPLY TO JEFFERSON COUNTY ATTORNEY



ADAM H. EDELEN
AUDITOR OF PUBLIC ACCOUNTS

November 8, 2012

Mike O'Connell
Jefferson County Attorney
600 W. Jefferson Street, Suite 2086
Louisville, KY 40202

Dear Mr. O'Connell:

I am in receipt of your letter dated October 31, 2012, regarding our referral to your office of findings in the Jefferson County Clerk's 2011 Fee Audit. I have found the response to our referral to be deeply frustrating because it in no way accurately reflected the nature of the findings in our report. Although I understand your advocacy for the position of your client, my office represents the taxpayers and I have the responsibility to ensure funds are handled in a manner that complies with state law.

First, let me clarify that there has been no departure in audit policy from previous audits of the Jefferson County Clerk. Although the Clerk has indicated she believes this to be the case, we have repeatedly stated that every audit year stands alone. This means that any new matters identified during an audit are not off limits just because previous auditors didn't come across the problem. This is simply an attempt to divert attention from the problems at hand.

Also, other matters addressed in your letter are misleading, and in some instances completely false. Although we attempted to clarify many of these misleading comments in our report and/or directly with the Clerk's office, it was clear upon the receipt of your letter that continued clarification is needed.

Finding 2011-2 does not state that "public agencies are prohibited from participation in charitable activities that have historically enhanced the public's health and welfare." That is a position of the Clerk, as noted in her response to the finding. It is troubling that the primary purpose of this finding was overlooked. The finding reported serious problems in the Clerk's accounting for the funds collected for charitable purposes. Recordkeeping was not sufficient to verify the total amount collected for the various charities, funds contributed to charities were used to purchase personal items such as t-shirts and employee lunches, and funds solicited for one charity were not remitted to the charity. It is hard to believe that in light of these circumstances your letter states that *audit policies* endanger the partnership charities have with public agencies. It is my view that this type of mishandling of funds not only damages those partnerships directly, but could also damage the public's trust by drawing into question whether their donations are getting to the charities.

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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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