



Auditor of Public Accounts  
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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 2014 financial statement of Jefferson County Clerk Bobbie 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 public funds only for necessary expenses of the clerk's office.** The Clerk expended \$284 for items not considered allowable expenses of a County Clerk's office. Three checks tested were made payable to Sam's Club and included receipts for candy purchases and totaled \$284. Supporting documentation for these expenditures noted that the purchases were for "parade candy." All expenditures of the Clerk's fee account should be necessary for the operation of the Clerk's office, should not be personal in nature, and should be adequately documented. Good internal controls dictate that the Clerk should monitor expenditures to ensure compliance with state laws and regulations. In Funk vs. Milliken, 317 S.W.2d 499 (KY 1958), Kentucky's highest court reaffirmed the rule that county fee officials' expenditures of public funds will be allowable only if they are necessary for the operation of the office, adequately documented, reasonable in amount, beneficial to the public, and not

predominately personal in nature. We recommend the Clerk ensure that all expenditures are reasonable and necessary for the operations of the office and not predominately personal in nature. We also recommend the Clerk repay \$284 with personal funds to the 2014 fee account.

Further, in the calendar 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 also reimburse the official fee account \$3,845 for disallowed expenditures from the calendar year 2011 audit.

*County Clerk's response: Last year, the Jefferson County Clerk's Office provided a response to the same comment as Comment 1 in this review. The 2011 and 2012 Audits erroneously listed two expenditures as unnecessary and recommended reimbursement. The 2014 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 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 titled 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 tow 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.*

*The new item for \$284 that has been added as an unnecessary expense has passed all previous audits. "Parade candy" has been distributed by County Clerks across the Commonwealth as well as other elected officials for many years. This year, the Auditor's office has decided that this is not an allowable expense. It would be most beneficial if they would provide advanced notice of items that will no longer be allowable instead of after the fact in an audit comment. The Jefferson County Clerk's Office will discontinue the use of "parade candy" effective immediately as our intent is to be compliant in every aspect of expenditures.*

Auditor 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 and 2013-01, 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.

Further, while other clerks and public officials may have distributed parade candy for many years, as noted in the Clerk's response, this action does not mean that the expenditures would not be disallowed if noted during an audit. An audit does not include testing of every transaction that occurred during the audit period, but rather a sampling of transactions. As such, there will be expenditures that seem to "pass" an audit because they were not selected for testing. This does not validate those untested transactions. Contrary to the Clerk's response, the APA has disallowed parade candy and similar expenditures in other county clerk audits.

**The Jefferson County Clerk's Election Center should not provide election services for private entities.** In the 2011 audit exit conference, it was noted that the Clerk's Election Center provided election services, for a fee, to private entities, such as unions and churches. The activity continued in 2012, 2013 and 2014. These services 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's private purposes, and is charging a fee for a service where the fee is not authorized by statute. Per KRS 64.410(2)(b), a clerk, as a fee officer, may not receive for her services any fee for services rendered when the law has not fixed a compensation. Further, public equipment and personnel may be used only for a public purpose, and such use by a private entity is prohibited by Ky. Const. Sec. 171, as interpreted in OAG 84-190. We recommend the Clerk comply with KRS 64.410 and the Kentucky Constitution and discontinue providing and charging a fee for election services to private entities for the private purposes of those entities.

*County Clerk's response: Last year, the Jefferson County Clerk's Office provided a response to a comment almost identical to this Comment 2. The Jefferson County Clerk provides election services as required by KRS Chapter 117 and complies with all requirements of Kentucky law in so doing. These services are not*

*performed using fees from the Clerk's Fee Account which is the account examined in this Audit nor 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 two years ago 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.

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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