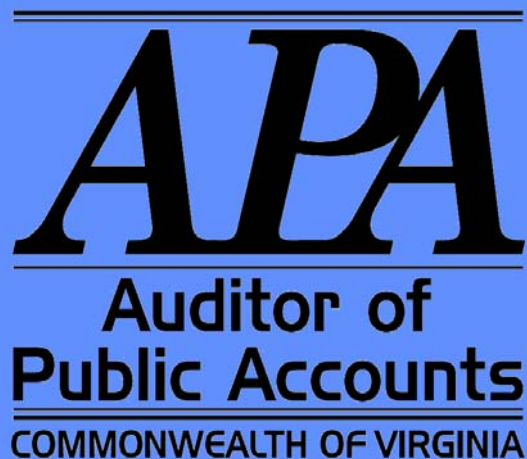


**CITY OF ROANOKE
REPORT ON COLLECTIONS
OF COMMONWEALTH REVENUES
BY LOCAL CONSTITUTIONAL OFFICERS**

**REPORT ON AUDIT
FOR THE YEAR ENDED
JUNE 30, 2012**



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Commonwealth of Virginia

Auditor of Public Accounts

Walter J. Kucharski
Auditor of Public Accounts

P.O. Box 1295
Richmond, Virginia 23218

August 31, 2012

David Bowers
Mayor
215 Church Avenue, SW, Room 452
Roanoke, VA 24011-1594

City of Roanoke

Dear Mr. Bowers:

We have reviewed the Commonwealth collections and remittances of the Treasurer, Commissioner of the Revenue, Sheriff, and Commonwealth's Attorney of the locality indicated for the year ended June 30, 2012. Our primary objectives were to determine that the officials have maintained accountability over Commonwealth collections, established internal controls, and complied with state laws and regulations.

The results of our tests found the Treasurer, Commissioner of the Revenue, Sheriff, and Commonwealth's Attorney complied, in all material respects, with state laws, regulations and other procedures relating to the receipt, disbursement, and custody of state funds, except as follows.

The Commonwealth's Attorney did not comply with state laws and regulations as described below.

Properly Remit Forfeited Asset Proceeds to the Treasurer

The Commonwealth's Attorney established a separate bank account for forfeited asset fund proceeds he received from the state Department of Criminal Justice Services (Department) during the period 2008 through 2012. Section 19.2-386.14 B of the Code of Virginia requires the Department to distribute the locality's share of the proceeds directly to the local treasurer. The Commonwealth's Attorney also disbursed the funds without an appropriation from the local governing body. Section 15.2-2506 of the Code of Virginia requires an appropriation for all expenditures. The Commonwealth's Attorney should transfer the remaining funds to the local Treasurer and obtain an appropriation for any funds already spent.

Properly Remit Excess Collection Fees

The Commonwealth's Attorney charged unallowable expenses totaling \$315 to the in-house collection program. The City and the Commonwealth share equally in any excess fees of the collections program. These unallowable expenses resulted in an under remittance to the Commonwealth of \$157. The Commonwealth's Attorney should give the fees of \$157 to the City Treasurer for deposit to the Commonwealth and send an amended collection program report to the Compensation Board.

We discussed these comments with the Commonwealth's Attorney on August 31, 2012 and we acknowledge the cooperation extended to us during this review.

Sincerely,

Auditor of Public Accounts

WJK:kwv

cc: Christopher P. Morrill, City Manager
Evelyn W. Powers, Treasurer
Sherman A. Holland, Commissioner of the Revenue
Octavia Johnson, Sheriff
Donald S. Caldwell, Commonwealth's Attorney

The Commonwealth's Attorney for the City of Roanoke provided the following response to this report:

I want to note that Randy Johnson has been a complete gentleman throughout our discussions, but reasonable minds can differ. In that regard, I respectfully submit the following additional comments related to these two areas:

Properly Remit Excess Collection Fees:

As discussed with Mr. Johnson, it is my understanding that he feels that the expenditure of \$315.00 on September 27, 2010, by Rita Mason, Director of the Cost Collection Program for the office of the Roanoke City Commonwealth's Attorney, for a single-shelf desktop organizer for use in the Roanoke City General District Court Clerk's office was an unallowable expense. I respectfully disagree with this finding and note that the collection of costs due the Commonwealth involves a great deal of un-reimbursed work on the part of the General District Clerk's office. Since the inception of the in-house collection program in the office of the Roanoke City Commonwealth's Attorney in the early 1990's, the Cost Collection Program has financially assisted the Clerk's Office with the purchase of items that mutually benefit the process of collecting unpaid fines and costs. As a percentage of gross collections for the period (\$702,106.53) in which this purchase was made, the \$315.00 amount represents four one-hundredths of one percent (0.0004486). As a percentage of the Program's actual collection expenses (\$77,538.26) for this same period, the \$315.00 amount represents four tenths of one percent (0.00406). Consequently, the money invested by the Program with this purchase is de minimis and also serves a legitimate purpose in the facilitation of cost collections. In closing, I also have been provided no authority for the position that this item is not a permissible expense.

Properly Manage Asset Forfeiture:

First, I vehemently disagree with this heading (*i.e.*, "Properly Manage Asset Forfeiture") because the particular issue that has arisen has nothing to do with management of funds. It has only to do with a disagreement over language in the Code of Virginia.

As the Department of Criminal Justice Services ("DCJS"), the City of Roanoke, HomeTown Bank, and many others are and have been aware, the office of the Commonwealth's Attorney for the City of Roanoke has its asset forfeiture account with HomeTown Bank, located in Roanoke, Virginia. The name on the account is "Roanoke City Commonwealths Attorney Asset Forfeiture." This is an account which is annually audited by DCJS and has been since its inception. Additionally, this account is available for audit by any other appropriate governmental auditing authority.

Mr. Johnson directed me to VA Code §19.2-386.14 as authority for the proposition that the Asset Forfeiture account for this office is required to be distributed directly to the treasury. Once again, I respectfully disagree that this requirement is mandated by the Code of Virginia. As I pointed out to Mr. Johnson, §19.2-386.14.B. clearly recognizes and distinguishes an office (such as mine) from an agency. The directive for deposits with the treasury specifically designates agencies and clearly omits reference to an office. In statutory construction, it is well-settled in Virginia that the legislature means what it says, that words have their plain meaning, and that (particularly where several specific words are used in the same statute) omissions and inclusions are intentional. Therefore, I believe my position to be based on sound legal reasoning. That is, an office may receive funds and may receive those funds directly.