



KENNETH T. SWISHER
CLERK OF THE CIRCUIT COURT
FOR THE
CITY OF LYNCHBURG

OCTOBER 1, 2019 THROUGH DECEMBER 31, 2020

Auditor of Public Accounts
Staci A. Henshaw, CPA

www.apa.virginia.gov

(804) 225-3350



COMMENTS TO MANAGEMENT

We noted the following matters involving internal control and its operation that has led or could lead to the loss of revenues, assets, or otherwise compromise the Clerk's fiscal accountability.

Properly Bill and Collect Court Costs

Repeat: Yes (first issued in 2018)

The Clerk did not properly bill and collect court costs. In eight of 42 cases tested (19%), we noted four cases in which defendants were overcharged \$6,312 and four in which defendants were not charged a total of \$1,660 in court costs.

The Clerk should correct the specific cases noted during the audit and institute a more diligent system of review to minimize the likelihood of billing errors going undetected. In all cases, the Clerk should bill and collect court costs in accordance with the Code of Virginia.

Properly Bill and Collect Taxes on Wills

Repeat: No

The Clerk did not properly bill and collect probate taxes when recording wills. In two of ten estates tested (20%), the Clerk did not bill for additional state and local probate taxes of \$448 after receiving the final inventories. The Clerk should bill the estates noted for the additional state and local probate taxes due and ensure that there is a procedure in place to calculate and assess additional taxes when final inventories are received in the future.

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Staci A. Henshaw, CPA
Auditor of Public Accounts

Commonwealth of Virginia

Auditor of Public Accounts

P.O. Box 1295
Richmond, Virginia 23218

April 21, 2021

The Honorable Dr. Kenneth T. Swisher
Clerk of the Circuit Court
City of Lynchburg

Mary Jane Dolan, Mayor
City of Lynchburg

Audit Period: October 1, 2019, through December 31, 2020
Court System: City of Lynchburg

We have audited the cash receipts and disbursements of the Clerk of the Circuit Court of this locality for the period noted above. Our primary objectives were to test the accuracy of financial transactions recorded on the Court's financial management system; evaluate the Court's internal controls; and test its compliance with significant state laws, regulations, and policies.

Management's Responsibility

Court management has responsibility for establishing and maintaining internal controls and complying with applicable laws and regulations. Internal control is a process designed to provide reasonable, but not absolute, assurance regarding the reliability of financial reporting, effectiveness and efficiency of operations, and compliance with applicable laws and regulations. Deficiencies in internal controls could possibly lead to the loss of revenues or assets, or otherwise compromise fiscal accountability.

We noted matters involving internal control and its operation necessary to bring to management's attention. These matters are discussed in the section titled Comments to Management. Any response and written corrective action plan to remediate these matters provided by the Clerk are included as an enclosure to this report.

We discussed these comments with the Clerk and we acknowledge the cooperation extended to us by the Clerk and his staff during this engagement.

Staci A. Henshaw
AUDITOR OF PUBLIC ACCOUNTS

SAH:vks

cc: The Honorable Michael T. Garrett, Chief Judge
Reid Wodicka, Interim City Manager
Robyn M. de Socio, Executive Secretary
Compensation Board
Paul F. DeLosh, Director of Judicial Services
Supreme Court of Virginia



TODD SWISHER, CLERK

CLERK'S OFFICE

LYNCHBURG CIRCUIT COURT

900 Court Street
Mailing Address:
P. O. Box 4
Lynchburg, Virginia 24505
Telephone 434-455-2620
Facsimile 434-847-1864
www.lyncburgva.gov/circuit-court

F. PATRICK YEATTS, JUDGE
J. FREDERICK WATSON, JUDGE

May 17, 2021

Mrs. Staci A. Henshaw
Auditor of Public Accounts
101 North 14th Street, 8th Floor
Richmond, VA 23219

Dear Mrs. Henshaw:

I would first like to thank Mr. Randall Johnson for his efforts in conducting this most recent APA audit. I welcome any auditing process as an opportunity for my office to improve and Mr. Johnson's findings reflect both our organizational strengths, as well as, developmental opportunities. It is imperative to have a firm understanding of both ends of the spectrum as we strive for excellence in all that we do. The following are my responses to the internal control findings cited in the audit, followed by the measures we are implementing to ensure corrective action.

- **Properly Bill and Collect Costs:**

The four cases where defendants were overcharged for an aggregate value of \$6,132 were the result of two primary procedural errors. First, due to my office's interpretation of Code of Virginia 19.2-163, staff has historically assessed costs to a defendant for each attorney in cases where the defendant had two or more attorneys during a case. I have been advised that this is procedurally incorrect and have corrected this error. Secondly, the office has assessed costs to a defendant when an investigator is serving as a defense witness but not when an investigator is serving as a witness for the Commonwealth. This, again, was based on our interpretation of the Code of Virginia. I have been advised that this is also procedurally incorrect and therefore, have corrected this practice as well. The office will no longer assess costs to a defendant related to investigator fees period.

The four cases where defendants were not charged for court costs totaling \$1,660 were primarily the result of failing to charge for psychological testing fees. This simply involved human error and not a procedural error.

- **Corrective Actions:**

As aforementioned, our office has corrected the two procedural errors identified above. With regard to the human errors noted, we have implemented an internal audit review policy. Each month, we will randomly select assessed court costs to review, in an effort to check for accuracy and ensure compliance. If errors are found they can be rectified in a timely manner.

- **Properly Collect Taxes on Wills:**

In two of the ten estates tested, the office failed to bill the estates for additional state and local probate taxes totaling \$448 after receiving the final inventories. This was the result of human error and not a procedural error.

- **Corrective Actions:**

My office has corrected the errors identified above by billing the aforementioned estates for the additional state and local probate taxes due based on the final inventories.

Additionally, we have implemented an internal audit review policy designed to find errors and ensure accuracy. At the end of each month, our probate clerk will review the final inventories received for that month to ensure that we have calculated and assessed additional taxes when merited. If errors are found they can be rectified in a timely manner.

In closing, as Clerk, I am pleased with the results of this most recent audit and with the efforts of my staff. The past 14 months have proved to be very challenging for everyone, both from a safety perspective and an operational perspective. Despite these challenges, my staff simply came to work each day and served the community, as they did not have the ability to work remotely. I am very proud of their collective resolve and selflessness in this regard. I also know that while we strive for perfection, that is unattainable. Of the errors that were identified in the audit, most were the result of human error, with the exception of two procedural errors based on a misinterpretation of the Code of Virginia, and both have been corrected. When considering the significant workload of this office and the thousands of transactions that we process, human errors are inevitable - the key is to minimize them. Through the use of the recently implemented internal audit review policies described above, this office is endeavoring to be proactive by finding and correcting these errors in the future.

Sincerely,



K. Todd Swisher
Clerk

Lynchburg Circuit Court Clerk's Office
434-455-2611