

**J. JACK KENNEDY, JR.
CLERK OF THE CIRCUIT COURT
FOR THE
COUNTY OF WISE**

**REPORT ON AUDIT
FOR THE PERIOD
APRIL 1, 2009 THROUGH MARCH 31, 2010**



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Commonwealth of Virginia

Walter J. Kucharski, Auditor

**Auditor of Public Accounts
P.O. Box 1295
Richmond, Virginia 23218**

August 26, 2010

The Honorable J. Jack Kennedy, Jr.
Clerk of the Circuit Court
County of Wise

Board of Supervisors
County of Wise

Audit Period: April 1, 2009 through March 31, 2010
Court System: County of Wise

We have audited the cash receipts and disbursements of the Clerk of the Circuit Court for this Court System and 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 a matter involving internal controls and its operation necessary to bring to management's attention. The matter is discussed in the section titled Comments to Management. Any response and written corrective action plan to remediate this matter provided by the Clerk are included as an enclosure to this report.

We discussed this comment with the Clerk and we acknowledge the cooperation extended to us by the court during this engagement.

AUDITOR OF PUBLIC ACCOUNTS

WJK:alh

cc: The Honorable Tammy S. McElyea, Chief Judge
Shannon C. Scott, County Administrator
Robyn M. de Socio, Executive Secretary
Compensation Board
Paul F. DeLosh, Director of Judicial Services
Supreme Court of Virginia
Director, Admin and Public Records
Department of Accounts

COMMENTS TO MANAGEMENT

We noted the following matter involving internal controls 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 Record Court Costs

We audited 48 cases and found errors in two of these cases where the Clerk is not properly entering fines and costs into the automated financial system as required by the Code of Virginia. In one case, the Clerk failed to enter the "drug offender fee" on the defendant's receivable resulting in a loss of revenue to the Commonwealth of \$150. In the other case, the Commonwealth, instead of the locality, paid court-appointed attorney fees totaling \$158; and the Clerk recorded the fine as a state offense instead of a local offense.

We recommend that the Clerk establish procedures to properly enter all fees into the automated financial system. Additionally, we recommend the Clerk provide proper oversight and training to employees to assist with determining court costs.



WISE COUNTY CLERK OF CIRCUIT COURT

Jack Kennedy

August 27, 2010

Auditor of Public Accounts
Attn: Walter Kucharski
24 Woodmere Dr., Apt E
Petersburg, VA 23805

In reply to: Wise County Circuit Court Audit Report
Audit Period: April 1, 2009 through March 31, 2010

Dear Mr. Kucharski:

Please take notice that the Clerk of Court for Wise County and the City of Norton officially states that no actual loss of revenues or assets occurred to the Commonwealth as a result of the findings of the auditor of public accounts for the audit period referenced above. Furthermore, corrective actions have been taken to prevent such errors from occurring in future cases. Corrective actions taken are fully explained below.

Drug Offender Fee

The Code of Virginia states in §17.1-275 *"In any case in which a person is convicted of a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § 18.2-251, the clerk shall assess a fee of \$150 for each felony conviction and each felony disposition under § 18.2-251 which shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and Treatment Fund."*

In one instance the auditor of public accounts determined the drug offender fee of \$150 was not added to a criminal case involving an imitation drug. A deputy clerk was under the impression that the drug offender fee did not apply to charges related to imitation drugs as advised by an Assistant Commonwealth's Attorney. This mistaken belief has been corrected. All Deputy Clerks of the Wise County and City of Norton Circuit Court clerk's office have been notified of this rare statutory occurrence. It shall not be repeated.

Upon the auditor of public accounts finding of this error, the \$150 drug offender fee was assessed to the criminal case resulting in no loss of revenue to the Commonwealth (emphasis added). A conviction based on charges involving imitation drugs is uncommon; therefore, this assessment error is rare.

Corrective action included the reading and proper interpretation of the drug offender fee state statute. A clear understanding of the assessment of the drug offender fee exists among all deputy clerks. The signatures affixed hereto acknowledge each deputy clerk's reading and clear understanding of the state statute and the correct assessment of the drug offender fee.

Code of Virginia §17.1-275

10. "In any case in which a person is convicted of a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § 18.2-251, the clerk shall assess a fee of \$150 for each felony conviction and each felony disposition under § 18.2-251 which shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and Treatment Fund."

 Julie Bates	 Gracie Hensley	 April Huff
 Joe Kirk	 Jennifer Maggard	 Sabrina Mullins
 Melanie B. Salyer	 Velma Shell	 Shelia Shupe
 Leslie Turner		

State Statutes and Local Ordinances

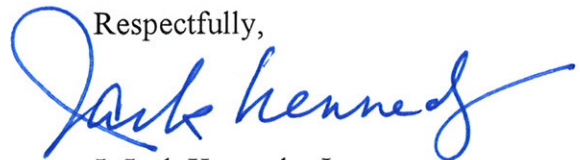
The auditor of public accounts found error in the assessment of court appointed attorney fees and fines. In one instance, the clerk assessed court appointed attorney fees and fines to the Commonwealth instead of the locality. This assessment resulted in the Commonwealth paying \$158 in court appointed attorney fees. The locality was to bear the burden of this expense. The clerk corrected the assessment error and the Commonwealth has been reimbursed in full for the pre-paid court appointed attorney fee of \$158. Furthermore, the locality is in receipt of the fine as directed by court order. This immediate corrective action resulted in no loss of revenue to the Commonwealth (emphasis added).

Corrective action included a meeting with the judges of the 30th judicial district, the Commonwealth's Attorney, Sheriff, and county and town attorneys setting forth concern with amendments between state statutes and local ordinances. The Judges are very conscious of motions to amend state statutes to local ordinances and have agreed to ensure the deputy clerk working in the courtroom is fully informed of such amendments. Further, all court orders are to be prepared at the bench at the time of trial and forwarded directly to deputy clerks assessing fines. This method will ameliorate any further statistical error rate and clearly denote the parties, the law or ordinance, and the signature and direction of the judge relating thereto.

Again, I wish to reiterate there was no loss of revenue to the Commonwealth or to any locality. All matters at hand have been resolved completely and corrective action taken to prevent future errors.

I deeply appreciate the auditor of public accounts bringing this matter to our attention so that no further statistical errors occur. We will continue to monitor this throughout the year and anticipate next year's audit.

Respectfully,

A handwritten signature in blue ink, appearing to read "Jack Kennedy", with a stylized flourish at the end.

J. Jack Kennedy, Jr.
Clerk of Court