

STATUTORY REPORT

**DISTRICT ATTORNEY
DISTRICT 13
BOGUS CHECK RESTITUTION PROGRAM
SUPERVISION PROGRAM
PROPERTY FORFEITURE PROGRAM**

For the period of July 1, 2009 through June 30, 2013



*Independently serving the citizens of
Oklahoma by promoting the
accountability and fiscal integrity of
governmental funds.*



Oklahoma State
Auditor & Inspector
Gary A. Jones, CPA, CFE

**EDDIE WYANT, DISTRICT ATTORNEY
DISTRICT 13**

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This publication, issued by the Oklahoma State Auditor and Inspector's Office as authorized by 74 O.S. § 212.E and 22 O.S. §§ 114, 991d, 991f-1.1, and 63 O.S. § 2-506 has not been printed, but is available on the agency's website (www.sai.ok.gov) and in the Oklahoma Department of Libraries Publications Clearinghouse Digital Collection, pursuant to 74 O.S. § 3105.B.



Oklahoma State Auditor & Inspector

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April 10, 2015

Eddie Wyant, District Attorney
District 13
Ottawa County Courthouse
Miami, Oklahoma 74354

Transmitted herewith is the statutory report for the District Attorney of District 13, Ottawa and Delaware Counties, Oklahoma (the District) for the period of July 1, 2009 through June 30, 2013.

A report of this type is critical in nature; however, we do not intend to imply that there were not commendable features in the present accounting and operating procedures of the District.

The goal of the State Auditor and Inspector is to promote accountability and fiscal integrity in state and local government. Maintaining our independence as we provide this service to the taxpayers of Oklahoma is of utmost importance.

We wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our office during our engagement.

Sincerely,

A handwritten signature in blue ink that reads "Gary A. Jones".

GARY A. JONES, CPA, CFE
OKLAHOMA STATE AUDITOR & INSPECTOR

**EDDIE WYANT, DISTRICT ATTORNEY
DISTRICT 13
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INTRODUCTORY INFORMATION

BOGUS CHECK PROGRAM

The bogus check program was created by the Oklahoma Legislature in 1982 as a special type of deferred prosecution program and every district attorney is required to operate a bogus check program. The program provides an alternative way to handle bogus check cases without any additional cost to courts, prosecutors, or the state prison system. The primary emphasis of the program is collecting restitution for the victim of the crime, rather than punishing the offender.

Bogus checks are a significant cost to business, a cost that is passed on to the consumer and paid by all citizens and taxpayers in the state. The bogus check program has been an effective way to address the economic problem caused by bogus checks. The program offers a way to address criminal conduct without sending a large number of offenders to state correctional facilities.

DISTRICT ATTORNEY SUPERVISION PROGRAM

The district attorney supervision program was created by the Oklahoma Legislature in 2005 as an alternative from supervision by the Department of Corrections. When the court imposes a deferred or a suspended sentence for any offense and does not order supervision by the Department of Corrections, the offender shall be required to pay the district attorney a monthly supervision fee. However, the legislation provides that in hardship cases, the district attorney shall expressly waive all or part of the fee.

DISTRICT ATTORNEY PROPERTY FORFEITURE PROGRAM

Most district attorneys in the state have a Property Forfeiture Fund. The fund is not subject to fiscal year limitations and is to be used for enforcement of controlled dangerous substance laws, drug abuse prevention and education, and is maintained by the District Attorney to be used at his or her discretion for those purposes. The revenues for said fund come from the proceeds of forfeited assets.

Any cash, vehicles, real property, or other assets used in the commission of or acquired as a result of a crime as described in the Uniform Controlled Dangerous Substances Act is presumed to be forfeitable.

Asset forfeiture is an effective law enforcement tool used by local district attorneys to deprive criminals of their ill-gotten gains by seizing the proceeds of criminal activity and property used to facilitate crime. The proceeds of seized, forfeited assets make a substantial contribution to the investigation and prosecution of drug related offenses.



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Statutory Report

Eddie Wyant, District Attorney
District 13
Ottawa County Courthouse
Miami, Oklahoma 74354

For the purpose of complying with 74 O.S. § 212.E and 22 O.S. §§ 114, 991d, and 63 O.S. § 2-506, we have performed the following procedures as they relate to the records of the District Attorney's programs for the period of July 1, 2009 through June 30, 2013.

Bogus Check, and Supervision Programs:

- Determine that internal controls are designed and operating over the collections and expenditures process.
- Examine fees to determine that the correct fees are assessed, receipted, and deposited in compliance with 28 O.S. § 153, 22 O.S. §§ 114, 991d, and 19 O.S. § 215.11.
- Determine whether expenditures are used to defray the expenses of the District Attorney's office in accordance with 22 O.S. §§ 114, and whether expenditures are supported by approved claims, invoices, and verification that goods or services paid for were received.
- Determine whether the District Attorney reconciles all accounts with the County Treasurer's ledgers.
- Determine whether the District Attorney prepares and submits an annual report to the District Attorneys Council that shows total deposits and total expenditures for the Bogus Check Restitution Program, and Supervision Program.

Property Forfeiture Program:

- Determine that internal controls are designed and operating over the collections and expenditures process.
- Determine that the District Attorney maintains a true and accurate inventory of all property seized in accordance with 63 O.S. § 2-506.K.
- Review sale documentation for selected cases to determine whether forfeited assets were sold after due notice at public auction to the highest bidder in accordance with 63 O.S. §§ 2-506 and 2-508.
- Review the distribution of proceeds to determine the distribution was in accordance with court orders pursuant to 63 O.S. §§ 2-506.K and 2-508.
- Test expenditures to determine they are supported by approved claims, invoices, and independent verification that goods or services paid for were received.

- Determine if the District Attorney prepared and submitted an annual report to the District Attorneys Council showing the total deposits, total expenditures, beginning and ending balances in accordance with 63 O.S. § 2-506.L.3.
- Determine if the District Attorney reconciles account balances with the County Treasurer.

All information included in the financial records of the bogus check restitution program, supervision program, restitution and diversion program, and the property forfeiture program are the representation of the District Attorney for their respective district.

Our engagement was limited to the procedures performed above and was less in scope than an audit performed in accordance with auditing standards generally accepted in the United States of America. Accordingly, we do not express an opinion on any basic financial statement of Ottawa and Delaware Counties.

Based on our procedures performed, we have presented our findings in the accompanying schedule.

This report is intended for the information and use of the District Attorney and the County Officials. However, this report is a matter of public record and its distribution is not limited.

A handwritten signature in blue ink, appearing to read "Gary A. Jones".

GARY A. JONES, CPA, CFE
OKLAHOMA STATE AUDITOR & INSPECTOR

July 9, 2014

**EDDIE WYANT, DISTRICT ATTORNEY
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SCHEDULE OF FINDINGS AND RESPONSES

Finding 1 – Segregation of Duties – Bogus Check, Supervision, and Property Forfeiture Accounts

Condition: The following are instances of the lack of segregation of duties in personnel within District Attorney accounts:

Ottawa County

A lack of segregation of duties exists in the procedural process of the Property Forfeiture Program (Trust Fund and Task Force Account). One employee, receives payments, prepares and delivers deposits, and prepares expenditures.

A lack of segregation of duties exists in the procedural process of the Bogus Check and Supervision Programs. The same employee who receives and enters payments can prepare and deliver deposits, prepare expenditures, and sign vouchers. In addition, no one other than the preparer reviews the deposit for accuracy.

Delaware County

A lack of segregation of duties exists in the procedural process of the Property Forfeiture Program (Trust Fund and Task Force Account). One employee, receives payments, prepares and delivers deposits, and prepares expenditures.

A lack of segregation of duties exists in the procedural process of the Bogus Check and Supervision Programs. The same employee who receives and enters payments can prepare and deliver deposits, prepare expenditures and sign vouchers. In addition, no one other than the preparer reviews the deposit for accuracy.

Cause of Condition: Procedures have not been designed to properly segregate key accounting functions.

Effect of Condition: A single person having responsibility for more than one area of recording, authorization, custody of assets, and execution of transactions could result in unrecorded transactions, misstated financial reports, clerical errors, or misappropriation of funds not being detected in a timely manner.

Recommendation: The Oklahoma State Auditor & Inspector's Office (OSAI) recommends management be aware of these conditions and realize that concentration of duties and responsibilities in a limited number of individuals is not desired from a control point of view. The most effective controls lie in management's oversight of office operations and a periodic review of operations. OSAI recommends management provide segregation of duties so that no one employee is able to perform all accounting functions. In the event that segregation of duties is not possible due to limited personnel, OSAI recommends implementing compensating controls to mitigate the risks involved with a concentration of

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duties. Compensating controls would include separating key processes and /or critical functions of the office, and having management review and approval of accounting functions.

Management Response:

District Attorney, Eddie Wyant: Since I took office as the District Attorney in January 2003, District 13 has never received a segregation of duties finding for Delaware County's Bogus Check, Supervision, or Property Forfeiture programs. Additionally, Ottawa County has never received a segregation of duties finding for this time period for its Bogus Check or Drug Task Force programs. In the audit for fiscal years 2008 and 2009 Ottawa County received a segregation of duties finding for its Supervision program, and it was concluded that this finding would be corrected with the addition of contractual accounting work that had already commenced at the time the audit was concluded.

Auditor Response: Designing and implementing a sound internal control system is the responsibility of management. Previous audits conducted by OSAI included compliance audits only. As discussed in the engagement letter signed by the District Attorney, this audit included determining whether internal controls were in place regarding the collections and disbursements processes. As noted, there is a lack of segregation of duties within the office and procedures should be implemented to correct this issue.

Criteria: Demonstration of accountability and stewardship are goals used in evaluating management's accounting for funds. A basic component of adequate internal controls is the segregation of duties so that one individual cannot perpetuate and conceal errors and irregularities in the normal course of his/her duties. To help ensure a proper accounting of funds and strong internal controls, the duties of receiving, receipting, recording, and depositing cash and checks should be separated among employees.

Finding 2 – Internal Control Environment - Written Policies and Procedures for Bogus Check Restitution, and Supervision Fee Programs

Condition: As part of our review of District Attorney accounts and records, we tested receipts, disbursements and cash balances. The District Attorney does not have written policies and procedures and/or has not designed and implemented internal controls for the safeguarding and reporting of program funds. As a result, deficiencies were noted in certain areas, which include the following:

Ottawa and Delaware Counties

Information Technology

- Employees are not required to log out of the system when leaving their workstation.
- Override and/or write-off reports are not reviewed periodically for unusual activity.
- A time out security measure has not been assigned in the system.
- IT software audit reports are not reviewed for voided or deleted receipts.
- Employees receiving payments are able to delete payments without prior approval.

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Cause of Condition: The District Attorney's office does not have formal policies in place establishing procedures for collections, disbursements, and financial reporting for the Bogus Check Restitution, and Supervision Fee accounts.

Effect of Condition: These conditions could result in employee error for the reporting and documentation of the collection of payments, defendant file maintenance, restitution payments, expenditure transactions, and the accounting of funds. In addition, these conditions could result in unrecorded transactions, misstated financial reports, undetected errors, or misappropriation of funds.

Recommendation: OSAI recommends that management adopt written policies and procedures for the accounting of program funds and the maintenance of client files. Implementing this recommendation would ensure that all employees are aware of their duties and responsibilities and that each program is properly accounted for and is in compliance with applicable laws and regulations. Such policies should include the following:

- Guidelines for the assignment of IT software administrative rights to an individual not directly associated with the day to day accounting processes.
- Guidelines for the administrative approval and review of IT software deletions, voids and write-off activity.

Furthermore, we recommend management identify, analyze and manage risks. Management should also assess the quality and effectiveness of the organizations internal control process over time and implement appropriate controls and oversight of each programs daily transactions and recordkeeping. This will ensure that management has taken the necessary steps in safeguarding the department's assets.

Management Response:

District Attorney, Eddie Wyant: A formal written policy has never been in place for District 13. Again, for fiscal years 2003-2009 this has never been a recommendation made by the State Auditor & Inspector and although I understand that this could be a legitimate *recommendation*, I disagree that this is a *reportable condition* because it has never been represented as a finding to the District.

Information technology is handled by the District Attorney's Council. The same agency oversees all of the Oklahoma District Attorney's information systems. I have not been requested by the Office of State Auditor & Inspector to implement log-in/log-out procedures for the software systems.

Override and/or write-off reports and voided and deleted receipt reports are RANDOMLY printed and reviewed for unusual activity.

Employees who are able to delete payments must go through the accounting software to do so, once the payment has been posted to the program. Again, software generated audit reports would reveal any unusual or unexplained activity. The accounting software was created for these programs and has very good inherent internal controls.

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Auditor Response: Designing and implementing a sound internal control system is the responsibility of management. Previous audits conducted by OSAI included compliance audits only. As discussed in the engagement letter signed by the District Attorney, this audit included determining whether internal controls were in place regarding the collections and disbursements processes. There are deficiencies regarding employees having administrator rights that would allow deletions, voids, and write-offs without any oversight. Although there may be some random oversight, there were no reports or evidence of this review provided to the auditor during fieldwork. This is an area of weakness that could result in errors and/or misappropriation.

Criteria: Basic components of effective internal controls include ensuring written policies and procedures for performing essential duties are adequately documented to ensure compliance with laws and regulations, to facilitate efficient transition of duties when changes in personnel occur, and to obtain supporting documentation for transactions and items affecting management decisions.

Finding 3 – Internal Control Environment - Written Policies and Procedures for District Attorney Drug Fund (Property Forfeiture)

Condition: As part of our review of District Attorney accounts and records, we tested receipts, disbursements and cash balances. The District Attorney does not have written policies and procedures and/or has not designed and implemented internal controls for the safeguarding and reporting of program funds. As a result, deficiencies were noted in certain areas, which include the following:

Ottawa County

- A detailed independent inventory listing of forfeited and/or relinquished property is not maintained.
- Receipts are not issued for seized funds.
- 2 of the 20 expenditures tested did not have an invoice attached to support the expenditure.
- 2 of the 20 expenditures tested did not have a requisition claim attached to verify approval of the expenditure.

Cause of Condition: The District Attorney's office does not have formal policies in place establishing procedures for collections, disbursements, and the financial reporting for the Drug Fund (Property Forfeiture) Program accounts.

Effect of Condition: These conditions could result in employee error for the reporting and documentation of the collection of payments, defendant file maintenance, restitution payments, expenditure transactions and the accounting of funds. In addition, these conditions could result in unrecorded transactions, misstated financial reports, undetected errors, or misappropriation of funds.

Recommendation: OSAI recommends that management adopt written policies and procedures for the accounting of program funds and the maintenance of files. Implementing this recommendation would ensure that all employees are aware of their duties and responsibilities and that the program is properly

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accounted for and is in compliance with applicable laws and regulations. Such policies should include the following:

- Guidelines with local seizing agencies (i.e., 50/50 split, disposition of property, etc.) for the seizure of funds/property.
- Guidelines for the oversight and documentation of case file maintenance and status of forfeited inventory.
- Guidelines for the oversight of the receipting process and the depositing of funds.
- Guidelines for the oversight of monthly reconciliations to the County Treasurer's account balances.
- Guidelines for the process of approval and documentation of account expenditures.

Furthermore, we recommend management identify, analyze, and manage risks. Management should also assess the quality and effectiveness of the organizations internal control process over time and implement appropriate controls and oversight of each programs daily transactions and recordkeeping. This will ensure that management has taken the necessary steps in safeguarding the department's assets.

Management Response:

District Attorney, Eddie Wyant: It is stated that a "detailed independent inventory listing of forfeited and/or relinquished property is not *maintained*." Documentation is maintained for each relinquishment and forfeiture for both Ottawa and Delaware Counties. Although this documentation is not in a "list" format; it is maintained. I argue that this again, is not a significant deficiency or material weakness that would make it a legitimate reportable condition.

"Receipts are not issued for seized funds" in Ottawa County. Cash forfeitures are taken directly to the Ottawa County Treasurer with the seizing agency's officer for immediate deposit. The cash is never held or maintained by the District Attorney's office.

2 of 20 expenditures tested did not have an invoice attached to support the expenditure; 2 of 20 expenditures tested did not have a requisition claim attached to verify approval of the expenditure:

1 of the expenditures tested that did not have an "invoice" or "requisition" was a voucher issued to the District Attorney's Council for payroll funds. This is not an expenditure of the office, but rather a transfer of funds from one location (local) to another (state). The actual "expenditure" occurs at DAC where proper documentation can be found. There is no "invoice" for this type of transfer; only a DAC transmittal which is used for these types of transactions. I was not provided any dollar amounts for these discrepancies, but it could be argued that the remaining transaction that lacked proper documentation was not of a material amount and is therefore not a reportable condition.

Auditor Response: A detailed inventory listing for seized property is required by statute and is necessary for proper accounting records to manage the seized property inventory. Receipts issued by the District Attorney for seized funds are necessary for proper accounting records that are used to generate annual reports for the District Attorneys Council, necessary for providing a record for when the funds

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became under the custody of the District Attorney, and to ensure that all funds received by the District Attorney's office were deposited with the County Treasurer.

Further, all expenditures should be supported with adequate documentation to ensure that a disbursement is for a necessary, authorized expense. A claim filed with no documentation would not be considered to be adequately supported. The District Attorney's office could not locate any transmittal documentation to support this claim at the time of fieldwork.

Criteria: Basic components of effective internal controls include ensuring written policies and procedures for performing essential duties are adequately documented to ensure compliance with laws and regulations, to facilitate efficient transition of duties when changes in personnel occur, and to obtain supporting documentation for transactions and items affecting management decisions.

Finding 4 – Unclaimed Bogus Check Restitution

Condition: Balances for the Bogus Check Restitution (Merchant) account had outstanding balances at June 30, 2013. This is a cumulative amount as a result of vouchers not cashed by merchants and subsequently cancelled. They are as follows:

Ottawa County

- At June 30, 2013, an amount totaling \$7,728.54 in merchant restitution was held in the District Attorney's Bogus Check Restitution fund.

Delaware County

- At June 30, 2013, an amount totaling \$5,110.49 in merchant restitution was held in the District Attorney's Bogus Check Restitution fund.

Cause of Condition: The District Attorney's office does not have formal policies establishing procedures to ensure that returned or unpaid vouchers are examined to determine the current status of the merchant for the re-issuance of the restitution.

Effect of Condition: These conditions resulted in the restitution fund not being properly cleared.

Recommendation: OSAI recommends that management research and determine the location of the merchants so that restitution can be properly remitted. Management should then contact the proper agency for further direction to determine the manner in which the remaining unidentified balance should be distributed.

Management Response:

District Attorney, Eddie Wyant: It is reported that the Bogus Check Merchant accounts have outstanding balances as of June 30, 2013. This is a true statement; however these balances were inherited from previous administrations. Balances of this nature also exist in the Victim Restitution

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account for the same reason. Bogus Check Merchant vouchers that are unclaimed and cancelled by statute by the County Treasurer are allocated after one year according to the agreement signed by the Merchant when the check is submitted to the DA's office for processing. This has been the procedure in District 13 since shortly after I took office. This issue has been discussed numerous times, in past audits, with various auditors from the State Auditor & Inspector's office along with the District Attorney's Council. No solution has ever been found, because these old funds cannot be linked back to specific merchants or victims (a condition that existed prior to me taking office).

Auditor Response: OSAI understands the difficulty in locating victims and remitting restitution. However, these funds do belong to victims and every endeavor should be made in delivering the funds to the victim or remitting the funds to the proper agency as recommended by the District Attorneys Council.

Criteria: Basic components of effective internal controls include ensuring written policies and procedures for performing essential duties are adequately documented to ensure compliance with laws and regulations, to facilitate efficient transition of duties when changes in personnel occur, and to obtain supporting documentation for transactions and items affecting management decisions.



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