

STATUTORY REPORT

**DISTRICT ATTORNEY
DISTRICT 10
BOGUS CHECK RESTITUTION PROGRAM
SUPERVISION PROGRAM
PROPERTY FORFEITURE PROGRAM**

For the period 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

**REX DUNCAN, DISTRICT ATTORNEY
DISTRICT 10**

**STATUTORY REPORT
BOGUS CHECK RESTITUTION PROGRAM
SUPERVISION PROGRAM
PROPERTY FORFEITURE PROGRAM**

**FOR THE PERIOD OF
JULY 1, 2009 THROUGH JUNE 30, 2013**

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

2300 N. Lincoln Blvd. • State Capitol, Room 100 • Oklahoma City, OK 73105 • Phone: 405.521.3495 • Fax: 405.521.3426

February 25, 2014

Rex Duncan, District Attorney
District 10
Osage County Courthouse
Pawhuska, Oklahoma 74056

Transmitted herewith is the statutory report for the District Attorney of District 10, Osage and Pawnee 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, appearing to read "Gary A. Jones".

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

**REX DUNCAN, DISTRICT ATTORNEY
DISTRICT 10
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2009 THROUGH JUNE 30, 2013**

TABLE OF CONTENTS

| | |
|---|----|
| Introductory Information | ii |
| Statutory Report of State Auditor and Inspector | 1 |
| Schedule of Findings and Responses | 3 |

**REX DUNCAN, DISTRICT ATTORNEY
DISTRICT 10
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2009 THROUGH JUNE 30, 2013**

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.



Oklahoma State Auditor & Inspector

2300 N. Lincoln Blvd. • State Capitol, Room 100 • Oklahoma City, OK 73105 • Phone: 405.521.3495 • Fax: 405.521.3426

Statutory Report

Rex Duncan, District Attorney
District 10
Osage County Courthouse
Pawhuska, Oklahoma 74056

For the purpose of complying with 74 O.S. § 212.E and 22 O.S. §§ 114, 991d, 991f-1.1, 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, 991f-1.1, 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 991f-1.1, 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 the 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 Osage or Pawnee County.

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

January 21, 2014

**REX DUNCAN, DISTRICT ATTORNEY
DISTRICT 10
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2009 THROUGH JUNE 30, 2013**

SCHEDULE OF FINDINGS AND RESPONSES

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

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

Osage County

A lack of segregation of duties exists in the procedural process of the Bogus Check Restitution Program (Merchant and DA Fees). One employee receives and enters payments, prepares and delivers the deposit, prepares expenditures, maintains subsidiary ledgers, performs monthly reconciliations, and prepares the annual report. No one other than the preparer reviews the deposits or reconciliations to ensure accuracy of the amounts reconciled.

A lack of segregation of duties exists in the procedural process of the Supervision Fee Program (including Incarceration Fee account). One employee prepares the deposit, prepares expenditures, maintains ledgers, and performs monthly reconciliations. No one other than the preparer reviews the deposits or reconciliations to ensure accuracy of the amounts reconciled.

A lack of segregation of duties exists in the procedural process of the DA Special Drug and DA Drug Asset Forfeiture accounts. One employee receives payments, prepares and delivers the deposit, prepares expenditures, maintains subsidiary ledgers, performs monthly reconciliations, and prepares the annual report. No one other than the preparer reviews the deposits or reconciliations to ensure accuracy of the amounts reconciled.

Pawnee County

A lack of segregation of duties exists in the procedural process of the Bogus Check Restitution Program (Merchant). One employee receives and enters payments, prepares and delivers the deposit, prepares expenditures, maintains subsidiary ledgers, performs monthly reconciliations, and prepares the annual report. No one other than the preparer reviews the deposits or reconciliations to ensure accuracy of the amounts reconciled.

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.

**REX DUNCAN, DISTRICT ATTORNEY
DISTRICT 10
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2009 THROUGH JUNE 30, 2013**

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 overseeing 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 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: To date, we have trained additional personnel in both offices to receive payments and deposits in order to segregate duties and responsibilities.

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:

Osage and Pawnee Counties

Information Technology

- Employees are not required to log out of the system when leaving their workstation.
- Override 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, altered, or deleted receipts.
- Employees receiving payments are able to delete payments without prior approval.

**REX DUNCAN, DISTRICT ATTORNEY
DISTRICT 10
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2009 THROUGH JUNE 30, 2013**

Bogus Check Restitution Program

Osage County

- Deposits are not made daily.
- A \$35.00 victim fee is automatically assessed to the offender, without documentation from the victim's banking institution.
- Receipts are not issued for all payments received at the time of the transaction.

Pawnee County

- Deposits are not made daily.
- A \$35.00 victim fee is automatically assessed to the offender, without documentation from the victim's banking institution.

Supervision Fee Program

Osage County

- Supporting documentation is not attached to refunds for overpayments to validate the purpose of the expenditure.

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 applying restitution payments to District Attorney fees and remitting restitution payments to merchants/victims. (i.e., merchants/victims are paid restitution before District Attorney fees are collected, etc.)
- Guidelines for the disposition of monies in an account when a merchant cannot be located.
- Guidelines for the oversight of the daily collection process and the deposit 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.

**REX DUNCAN, DISTRICT ATTORNEY
DISTRICT 10
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2009 THROUGH JUNE 30, 2013**

- 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: Our office is currently reviewing and considering existing written policies in place in other districts. It is our expectation to adopt and distribute our own set of policies before the end of this fiscal year. Following the implementation of the new vendor software, deletion of payments is impossible. Policies have been put in place to ensure deposits are made daily and the \$10.00 Victim's Restitution payment discrepancy has been corrected. Further, all payments are receipted immediately, at the time of the transaction.

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:

Osage County

- There are no formal written policies with local seizing agencies for processing seized property.

Pawnee County

- Property Forfeiture inventory is not maintained.

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,

**REX DUNCAN, DISTRICT ATTORNEY
DISTRICT 10
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2009 THROUGH JUNE 30, 2013**

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 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 deposit 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: Our office will draft and distribute a generic, written agreement with our local law enforcement agencies describing our forfeiture agreement. Pawnee County now has a property inventory for all forfeited property.

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 – Property Forfeiture Expenditures

Condition: Expenditures from the Property Forfeiture Fund may only be used for purposes restricted by statute. Discovery fees were deposited in the Property Forfeiture Fund along with forfeited funds. Although collections for discovery fees can be used for general purposes of the office, once these fees are deposited into this account the expenditures become restricted to the purposes as set forth in the Uniform Controlled Dangerous Substance Act. While the expenditures reviewed were allowable for the operation of the office they did not meet the criteria for this fund.

**REX DUNCAN, DISTRICT ATTORNEY
DISTRICT 10
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2009 THROUGH JUNE 30, 2013**

Cause of Condition: Fees other than restricted forfeited funds are deposited into this account for the purpose of daily expenditures.

Effect of Condition: This condition resulted in Property Forfeiture funds not being expended for the purposes intended by state statute.

Recommendation: OSAI recommends that management research and determine that applicable laws and regulations are complied with when a transaction occurs within a restricted fund.

Management Response: All funds derived from forfeited assets will in the future be utilized in accordance with existing guidelines.

Criteria: Title 63 O.S. § 2-506 (L.3) states in part, “The balance to a revolving fund in the office of the county treasurer of the county wherein the property was seized, said fund to be used as a revolving fund solely for enforcement of controlled dangerous substances laws, drug abuse prevention and drug abuse education, and maintained by the district attorney in his or her discretion..”

Finding 5 – 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:

Osage County

- At June 30, 2013, amounts totaling \$4,246.58 in merchant restitution was held in the District Attorney’s Bogus Check Restitution fund.

Pawnee County

- At June 30, 2013, amounts totaling \$11,196.97 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.

**REX DUNCAN, DISTRICT ATTORNEY
DISTRICT 10
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2009 THROUGH JUNE 30, 2013**

Management Response: Our records don't indicate the sources of these monies. We will check with DAC and other state agencies for guidance, but intend to forward these monies to the Victim's Compensation Board, the State Treasurer's Office (unclaimed property) or other entity based on current statutes. Going forward, we will implement policies to address returned vouchers and bad addresses, etc.

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.



OFFICE OF THE STATE AUDITOR & INSPECTOR
2300 N. LINCOLN BOULEVARD, ROOM 100
OKLAHOMA CITY, OK 73105-4896

WWW.SAI.OK.GOV