

**DISTRICT ATTORNEY
DISTRICT 16**

**BOGUS CHECK
RESTITUTION FUND**

**FOR THE YEAR ENDED
JUNE 30, 2008**

**STATUTORY
REPORT**



Oklahoma State Auditor
& Inspector

**JEFF SMITH, DISTRICT ATTORNEY
DISTRICT 16
STATUTORY REPORT
BOGUS CHECK RESTITUTION FUND
FOR THE YEAR ENDED
JUNE 30, 2008**

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STATE AUDITOR AND INSPECTOR

STEVE BURRAGE, CPA
State Auditor

MICHELLE R. DAY, ESQ.
Chief Deputy



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June 2, 2010

Jeff Smith, District Attorney
District 16
LeFlore County Courthouse
Poteau, Oklahoma 74953-0880

Transmitted herewith is the statutory report for the District Attorney of District 16, Latimer and LeFlore Counties, Oklahoma (the District) for the fiscal year ended June 30, 2008.

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.

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

The Office of the State Auditor and Inspector is committed to serve the public interest by providing independent oversight and to issue reports that serve as a management tool to the State to ensure a government which is accountable to the people of the State of Oklahoma.

Sincerely,

A handwritten signature in blue ink that reads "Steve Burrage".

STEVE BURRAGE, CPA
STATE AUDITOR & INSPECTOR

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INTRODUCTORY INFORMATION

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.

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Statutory Report

Jeff Smith, District Attorney
District 16
LeFlore County Courthouse
Poteau, Oklahoma 74953-0880

For the purpose of complying with 74 O.S. § 212 (E) and 22 O.S. § 114, we have performed each of the following procedures as they relate to the records of the Bogus Check Restitution Fund for the fiscal year 2008.

- Examine fees to determine that the correct fees were assessed, receipted, and deposited in compliance with 28 O.S. § 153.
- Determine whether expenditures were used to defray lawful expenses of the District Attorney's office and restitution agreements do not exceed three years in accordance with 22 O.S. § 114; whether expenditures were supported by invoices and approved claims; and that goods or services paid for were received.
- Determine whether the fund reconciles to the County Treasurer's records.
- Determine that the District Attorney prepared and submitted an annual report to the District Attorney's Council showing the total deposits and total expenditures, and that expenditures were properly classified and presented.

All information included in the financial records of the bogus check restitution program is 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 general-purpose financial statements of Latimer or LeFlore Counties.

Based on our procedures performed, District 16 was properly receipting and depositing the correct fees in compliance with 28 O.S. § 153; expenditures were used to defray lawful expenses of the District Attorney's office and restitution agreements do not exceed three years in accordance with 22 O.S. § 114; expenditures were supported by invoices and approved claims; goods or services paid for were received; the fund balance reconciled to the County Treasurer's records; the District Attorney prepared and submitted an annual report to the District Attorney's Council; and expenditures were properly classified and presented. With respect to fees being properly assessed in compliance with 28 O.S. § 153 and restitution being paid to merchants in a timely manner in the bogus check program, our findings are presented in the accompanying schedule of findings and responses. In performing the procedures we noted a lack of segregation of duties, and the finding is also included.

We have prepared a detailed analysis of the Bogus Check Restitution Fund, which is presented following this report.

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

Sincerely,

A handwritten signature in blue ink that reads "Steve Burrage". The signature is written in a cursive style with a large initial "S" and a stylized "B".

STEVE BURRAGE, CPA
STATE AUDITOR & INSPECTOR

April 5, 2010

BOGUS CHECK RESTITUTION FUND ANALYSIS

COLLECTION INFORMATION

| | | |
|--|--------------|-------------------|
| Number of checks received from merchants | <u>2,667</u> | |
| Dollar amount of checks received | | <u>\$ 189,682</u> |

RESTITUTION INFORMATION

| | | |
|---|--------------|------------------|
| Beginning Restitution Account Balance at July 1, 2007 | | \$ 25,930 |
| Number of Restitution checks collected | <u>2,567</u> | |
| Amount in Restitution collected for merchants | | 495,671 |
| Amount in Restitution paid to merchants | | <u>507,440</u> |
| Ending Restitution Account Balance at June 30, 2008 | | <u>\$ 14,161</u> |

FEE AND EXPENDITURES INFORMATION

| | | |
|--|--------------|-------------------|
| Beginning District Attorney Fee Balance at July 1, 2007 | | \$ 123,916 |
| Amount of District Attorney fees collected during the period | | 299,935 |
| Expenditures: | | |
| Personnel Costs | 180,000 | |
| Maintenance and Operation Costs | 31,938 | |
| Other Expenses | <u>3,922</u> | |
| Total Expenditures | | <u>215,860</u> |
| Ending District Attorney Fee Balance at June 30, 2008 | | <u>\$ 207,991</u> |

SCHEDULE OF FINDINGS AND RESPONSES

Finding 2008-1 – Segregation of Duties

Criteria: Accountability and stewardship are overall goals of management in the accounting of funds. To help ensure a proper accounting of funds, the duties of receiving, receipting, recording, depositing cash and checks, reconciliations, and transaction authorization should be segregated.

Condition: Based on inquiries and observation of personnel in the District Attorney's Bogus Check Restitution Program, it was noted that the duties of receiving, receipting, recording, and depositing collections were not adequately segregated for the District Attorney's office.

Effect: These conditions could result in unrecorded transactions, misstated financial reports, undetected errors, or misappropriation of funds.

Recommendation: 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 management review and approval of accounting functions.

Views of responsible officials and planned corrective actions: We will do our best, within our limited resources, to address this situation.

Finding 2008-2 – District Attorney Fees

Criteria: According to 22 O.S. § 114.B:

Each restitution agreement shall include a provision requiring the defendant to pay to the victim a Twenty-five Dollar (\$25.00) fee and to the district attorney a fee equal to the amount which would have been assessed as court costs upon filing of the case in district court plus Twenty-five Dollars (\$25.00) for each check covered by the restitution agreement; provided, every check in an amount of Fifty Dollars (\$50.00) or more shall require a separate fee to be paid to the district attorney in an amount equal to the amount which would be assessed as court costs for the filing of a felony case in district court plus Twenty-five Dollars (\$25.00). This money shall be deposited in a special fund with the county treasurer to be known as the "Bogus Check Restitution Program Fund". This fund shall be used by the district attorney to defray any lawful expense of the district

attorney's office. The district attorney shall keep records of all monies deposited to and disbursed from this fund. The records of the fund shall be audited at the same time the records of county funds are audited.

Condition: During our testwork of offender files, we noted an instance where the District Attorney fees were waived on a bogus check.

Effect: This condition could result in possible inequities to all individuals in the application of restitution agreements.

Recommendation: OSAI recommends District Attorney's fees be charged for every bogus check received in accordance with state statutes.

Views of responsible officials and planned corrective actions: We will comply with the statutory requirements and apologize for the oversight.

Finding 2008-3 – Unclaimed Restitution

Criteria: Effective internal controls include ledgers maintained in a detailed manner that provides sufficient, accurate information regarding amounts held in trust for others.

Title 22 O.S. § 114.C states:

Restitution paid by the defendant to the victim shall include the face amount of the check plus any charges the victim may have been required to pay to a bank as the result of having received the bogus check. If, instead of paying restitution directly to the victim, the defendant delivers restitution funds to the office of the district attorney, the district attorney shall deposit such funds in a depository account in the office of the county treasurer to be disbursed to the victim by a warrant signed by the district attorney or a member of the staff assigned to the Bogus Check Restitution Program. The district attorney shall keep full records of all restitution monies received and disbursed. These records shall be audited at the same time the county funds are audited.

Title 60 O.S. § 651.9a states:

"Intangible property" includes: money, checks, drafts, deposits, interest, dividends, and income;

Title 60 O.S. § 657 states:

Intangible property held for the owner by a court, state or other government, governmental subdivision or agency, public corporation, or public authority which remains unclaimed by the owner for more than one (1) year after becoming payable or distributable is presumed abandoned.

Title 60 O.S. § 661.A states:

A person holding property, tangible or intangible, presumed abandoned and subject to custody as unclaimed property under the Uniform Unclaimed Property Act shall report to the State Treasurer concerning the property as provided in this section.

Condition: An amount totaling \$10,872.02 in merchant restitution is being held in the District Attorney's Bogus Check Restitution Fund. This is a cumulative amount from prior administrations as a result of vouchers not cashed by defendants and subsequently cancelled and not being able to locate some defendants.

In September 2007, outstanding vouchers of \$3,288.88 were cancelled by the Treasurer because they were outstanding for more than one year. The District Attorney's office could not identify the restitution cases related to this amount.

There are no established procedures in the District Attorney's office to ensure that old cases with balances are researched to remit the restitution to the defendants. As of June 30, 2008, the amount of unidentified restitution not remitted to victims totaled \$14,160.90

Effect: This condition results in the restitution fund not being properly cleared.

Recommendation: OSAI recommends that victims' restitution funds be remitted to the State Treasurer's office one year after becoming payable in accordance with the Uniform Unclaimed Property Act.

Views of responsible officials and planned corrective actions: We will upgrade our efforts to get restitution to victims in a more timely manner. We will also investigate any statutory responsibilities with regard to undeliverable monies.



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