

STATUTORY REPORT

**DISTRICT ATTORNEY
DISTRICT 16**

**BOGUS CHECK RESTITUTION PROGRAM, SUPERVISION
PROGRAM, RESTITUTION AND DIVERSION 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

**JEFF SMITH, DISTRICT ATTORNEY
DISTRICT 16**

**STATUTORY REPORT
BOGUS CHECK RESTITUTION PROGRAM
SUPERVISION PROGRAM
RESTITUTION AND DIVERSION 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

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February 24, 2014

Jeff Smith, District Attorney
District 16
Leflore County Courthouse
Poteau, Oklahoma 74953

Transmitted herewith is the statutory report for the District Attorney of District 16, Leflore and Latimer 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

**JEFF SMITH, DISTRICT ATTORNEY
DISTRICT 16
STATUTORY REPORT
FOR THE PERIOD OF JULY 1, 2009 THROUGH JUNE 30, 2013**

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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.

RESTITUTION AND DIVERSION PROGRAM

The restitution and diversion program was created by the Oklahoma Legislature in 2001 as a special type of deferred prosecution program. The legislation required that each district attorney create such a program. The purpose of the program is to allow the district attorney the discretion to divert criminal complaints involving property crimes from criminal court and to collect restitution for victims.

The program allows the district attorney's office to receive, disburse, and monitor victim restitution payments. The program offers an alternative way to address criminal conduct.

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

Jeff Smith, District Attorney
District 16
Leflore County Courthouse
Poteau, Oklahoma 74953

For the purpose of complying with 74 O.S. § 212.E and 22 O.S. §§ 114, 991d, 991.f-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, Supervision, and Restitution and Diversion 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, the Supervision Program, and Restitution and Diversion 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 Leflore or Latimer 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 27, 2014

**JEFF SMITH, DISTRICT ATTORNEY
DISTRICT 16
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:

Leflore County

A lack of segregation of duties exists in the procedural process of the Bogus Check Restitution (Merchant and DA Fees) and Supervision Programs. 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 DA Controlled Substance and Drug Seizure 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.

Latimer County

A lack of segregation of duties exists in the procedural process of the DA Controlled Substance account. One employee receives payments, prepares and delivers the deposit, prepares expenditures, and maintains subsidiary ledgers.

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 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.

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Management Response: Over the course of the last year, we have developed an office policies and procedures manual that attempts to streamline many of the processes in the office. These processes are under continuous review to ensure that the state's money and assets are safeguarded and used wisely.

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's office has established some written policies and procedures for internal controls and the safeguarding and reporting of program funds. However, as policies are being established and implemented, deficiencies were noted in certain areas, which include the following:

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.

Bogus Check Restitution Program

Latimer County

- Receipts are not issued for bogus check payments received.

Supervision Fee Program

Latimer County

- Receipts are not issued for supervision payments received.

Cause of Condition: The District Attorney's office had not fully established and implemented formal policies and procedures for collections, disbursements, and financial reporting for the Bogus Check Restitution, Restitution and Diversion, and Supervision Fee accounts.

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Effect of Condition: This 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, this condition 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 the 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.
- 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: Over the course of the last year, we have developed an office policies and procedures manual that attempts to streamline many of the processes in the office. These processes are under continuous review to ensure that the state's money and assets are safeguarded and used wisely.

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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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’s office has established some written policies and procedures for internal controls and the safeguarding and reporting of program funds. However, as policies are being established and implemented, deficiencies were noted in certain areas, which include the following:

Latimer County

- Subsidiary ledgers are not reconciled monthly to the County Treasurer.
- Receipts are not issued for all monies received.
- 13 of 15 expenditures tested were not verified ensuring that goods and/or services had been received (i.e., receiving report).
- \$373.00 in forfeited money could not be located.

Cause of Condition: The District Attorney’s office had not fully established and implemented formal policies and procedures for collections, disbursements, and financial reporting for the Drug Fund (Property Forfeiture) Program accounts.

Effect of Condition: This condition resulted 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, this condition 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

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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: Over the course of the last year, we have developed an office policies and procedures manual that attempts to streamline many of the processes in the office. These processes are under continuous review to ensure that the state's money and assets are safeguarded and used wisely.

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 – Annual Reports

Condition: As part of our review of District Attorney Programs, we ensure that amounts on annual reports reconcile with the County Treasurer's balances, and are accurately reflected in the amounts submitted to the District Attorneys Council (DAC). From our review, the following discrepancies were noted:

Leflore County

- An annual report is not prepared for the Latimer County's Drug Asset Forfeiture account, resulting in \$11,986.50 in unreported amounts at June 30, 2013 to the District Attorney's Council.

Cause of Condition: When preparing the annual report, program ledger balances were not reconciled to the County Treasurer's balances to ensure accuracy.

Effect of Condition: This could result in inaccurate annual reporting of expenditure, income, and account balances submitted to the District Attorney's Council (DAC) for program fund activity.

Recommendation: OSAI recommends that management adopt written policies and procedures for the accounting and reporting of program funds. 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 for the oversight of monthly reconciliations to the County Treasurer's account balances.
- Guidelines for accurate reporting of annual reports and the review process.

Management Response: Over the course of the last year, we have developed an office policies and procedures manual that attempts to streamline many of the processes in the office. These processes are under continuous review to ensure that the state's money and assets are safeguarded and used wisely.

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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 5 – Unclaimed Bogus Check Restitution and Restitution and Diversion Funds

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

Leflore County

- At June 30, 2013, an amount totaling \$3,037.14 in merchant restitution was held in the District Attorney's Bogus Check Restitution fund.
- At June 30, 2013, an amount totaling \$641.67 in victim restitution was held in the District Attorney's Restitution and Diversion 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/victim for the re-issuance of the restitution.

Effect of Condition: This condition resulted in the restitution fund not being properly cleared.

Recommendation: OSAI recommends that management research and determine the location of the merchants/victims 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: The unpaid vouchers will be researched to pinpoint who should have been paid, to ensure that the outstanding funds are delivered to proper business or person and to identify incorrect contact information for those people or businesses. Any unclaimed money where the business or person cannot be contacted will be remitted as unclaimed funds pursuant to state statutes.

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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