

STATUTORY REPORT

**DISTRICT ATTORNEY  
DISTRICT 23**

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

For the period July 1, 2008 through June 30, 2012



*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

**RICHARD SMOTHERMON, DISTRICT ATTORNEY  
DISTRICT 23**

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

**FOR THE PERIOD OF JULY 1, 2008 THROUGH JUNE 30, 2012**

---

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](http://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

October 11, 2013

Richard Smothermon, District Attorney  
District 23  
Pottawatomie County Courthouse  
Shawnee, Oklahoma 74801

Transmitted herewith is the statutory report for the District Attorney of District 23, Pottawatomie and Lincoln Counties, Oklahoma (the District) for the period of July 1, 2008 through June 30, 2012.

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". The signature is fluid and cursive, with a long horizontal stroke at the end.

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

**RICHARD SMOTHERMON, DISTRICT ATTORNEY  
DISTRICT 23  
STATUTORY REPORT  
FOR THE PERIOD OF JULY 1, 2008 THROUGH JUNE 30, 2012**

---

---

**TABLE OF CONTENTS**

Introductory Information ..... ii

Statutory Report of State Auditor and Inspector ..... 1

Schedule of Findings and Responses ..... 3

**RICHARD SMOTHERMON, DISTRICT ATTORNEY  
DISTRICT 23  
STATUTORY REPORT  
FOR THE PERIOD OF JULY 1, 2008 THROUGH JUNE 30, 2012**

---

**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.

**RICHARD SMOTHERMON, DISTRICT ATTORNEY  
DISTRICT 23  
STATUTORY REPORT  
FOR THE PERIOD OF JULY 1, 2008 THROUGH JUNE 30, 2012**

---

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

Richard Smothermon, District Attorney  
District 23  
Pottawatomie County Courthouse  
Shawnee, Oklahoma 74801

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, 2008 through June 30, 2012.

### 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 Pottawatomie or Lincoln 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

August 12, 2013



**RICHARD SMOTHERMON, DISTRICT ATTORNEY  
DISTRICT 23  
STATUTORY REPORT  
FOR THE PERIOD OF JULY 1, 2008 THROUGH JUNE 30, 2012**

---

**SCHEDULE OF FINDINGS AND RESPONSES**

**Finding-1 – Segregation of Duties – Bogus Check, Restitution and Diversion, Supervision, and DA Property Forfeiture Accounts**

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

**Pottawatomie County**

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

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

A lack of segregation of duties exists in the procedural process of the Bogus Check Restitution (DA Fee) Program. One employee prepares expenditures, maintains account ledgers, and performs monthly reconciliations. No one other than the preparer reviews the reconciliations to ensure accuracy of the amounts reconciled.

A lack of segregation of duties exists in the procedural process of the Restitution and Diversion Program. One employee, receives payments, prepares and delivers deposits, prepares expenditures, maintains account ledgers, and performs reconciliations. No one other than the preparer reviews the reconciliations to ensure accuracy of the amounts reconciled.

**Lincoln County**

A lack of segregation of duties exists in the expenditure process of the Property Forfeiture Program. One employee, receives payments, and prepares and delivers deposits. In addition, the same employee prepares vouchers, maintains account ledgers, and performs monthly reconciliations. No one other than the preparer reviews the 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.

**RICHARD SMOTHERMON, DISTRICT ATTORNEY  
DISTRICT 23  
STATUTORY REPORT  
FOR THE PERIOD OF JULY 1, 2008 THROUGH JUNE 30, 2012**

---

**Recommendation:** The Oklahoma State Auditor'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 approve accounting functions.

**Management Response:** Prior to this audit, the Office of the District Attorney instituted a basic policy of segregation of duties for both counties in the district. Although this policy was not in effect for the fiscal years audited, we believe we are on the right track to correcting this issue. We agree with the recommendations of the Oklahoma State Auditor & Inspector and anticipate further evaluation by our office and amendment to our current policy to comply with the recommendations.

**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 segregated among employees.

**Finding-2 – Internal Control Environment - Written Policies and Procedures for Bogus Check Restitution, Restitution and Diversion 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:

***Bogus Check Restitution Program***

**Pottawatomie County**

- Four of the twenty expenditures tested from the Bogus Check Fee account was not verified insuring that goods and/or services had been received (i.e., receiving report).

**Lincoln County**

- Five of the thirteen expenditures tested from the District Attorney Fee account was not verified ensuring that goods and/or services had been received (i.e., receiving report).
- Handwritten duplicate receipts are not maintained for payments received.
- Subsidiary ledgers for the Bogus Check District Fee account could not be located.

**RICHARD SMOTHERMON, DISTRICT ATTORNEY  
DISTRICT 23  
STATUTORY REPORT  
FOR THE PERIOD OF JULY 1, 2008 THROUGH JUNE 30, 2012**

---

*Restitution and Diversion Program*

**Pottawatomie County**

- Handwritten duplicate receipts are not maintained for this account.
- Subsidiary ledgers do not reconcile to the County Treasurer.

*Supervision Fee Program*

**Lincoln County**

- Handwritten duplicate receipts are not maintained for payments received.

**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, Restitution and Diversion, 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, 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 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 collections 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 organization's internal control process overtime and implement appropriate controls and oversight of each program's daily transactions and recordkeeping. This will ensure that management has taken the necessary steps in safeguarding the department's assets.

**RICHARD SMOTHERMON, DISTRICT ATTORNEY  
DISTRICT 23  
STATUTORY REPORT  
FOR THE PERIOD OF JULY 1, 2008 THROUGH JUNE 30, 2012**

---

**Management Response:** In previous years, this office has not maintained a receiving report for recurring expenses for services. Based on this Oklahoma State Auditor & Inspector finding, we are now maintaining receiving reports for such expenses. We have also begun a system of maintaining handwritten duplicate receipts for payments received as recommended. A written policy and procedure for this recommended control is in development.

**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:

**Pottawatomie County**

- Handwritten, sequential duplicate receipts are not issued for all funds received (i.e., drug assessments and seized funds).
- Two of the twenty expenditures tested did not have an approving signature on the expenditure claim to verify approval of the expenditure.
- Seven of the twenty expenditures tested from the District Attorney Fee account was not verified ensuring that goods and/or services had been received (i.e., receiving report).
- There are no formal written policies with local seizing agencies for the processing of seized property.

**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, 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

**RICHARD SMOTHERMON, DISTRICT ATTORNEY  
DISTRICT 23  
STATUTORY REPORT  
FOR THE PERIOD OF JULY 1, 2008 THROUGH JUNE 30, 2012**

---

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 organization's internal control process overtime and implement appropriate controls and oversight of each program's daily transactions and recordkeeping. This will ensure that management has taken the necessary steps in safeguarding the department's assets.

**Management Response:** Our response for this finding is essentially the same as the response for Finding-2. Based on this Oklahoma State Auditor & Inspector finding, we are now maintaining receiving reports for expenditures in all cases. We have also begun a system of maintaining handwritten duplicate receipts for all seized funds brought to the District Attorney's Office to provide documentation of their receipt, deposit, forfeiture, and disbursement. A written drug asset forfeiture program policy and procedure is in development.

**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:

##### **Pottawatomie County**

- We were unable to reconcile FY09, FY10, and FY11 Bogus Check Victim (merchant) portion of the annual reports to the County Treasurer's balances. It appears that District Attorney fees in the amount of \$193,244.87 were not reported and transferred to the District Attorney Fee account in a

**RICHARD SMOTHERMON, DISTRICT ATTORNEY  
DISTRICT 23  
STATUTORY REPORT  
FOR THE PERIOD OF JULY 1, 2008 THROUGH JUNE 30, 2012**

---

timely manner. In addition to the District Attorney fees, we were unable to reconcile total collections and expenditures to the County Treasurer.

- The FY12 annual report for the Bogus Check Victim (merchant) portion of the annual report did not reflect fees collected for victims in the amount of \$58,841.80.

**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 condition could result in inaccurate annual reporting of expenditures, income, and account balances submitted to the District Attorneys' 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:** The District Attorney's Office agrees with this finding. In FY 2010, we combined all management functions of our Bogus Check Division to the Pottawatomie County location. We are also diligently working on a software solution that will provide us with the data to correctly report our collections, expenditures, and fees to/from the Bogus Check accounts. Improved procedures and policies are in development.

**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**

**Condition:** Balances for the Bogus Check Restitution (Merchant) account had outstanding balances at June 30, 2012. This is an accumulative amount, as a result of vouchers not cashed by merchants and subsequently cancelled. As a result, we noted the following:

##### **Pottawatomie County**

At June 30, 2012, an amount totaling \$6,738.64 in merchant restitution was held in the District Attorney's Bogus Check Restitution Fund.

**RICHARD SMOTHERMON, DISTRICT ATTORNEY  
DISTRICT 23  
STATUTORY REPORT  
FOR THE PERIOD OF JULY 1, 2008 THROUGH JUNE 30, 2012**

---

**Lincoln County**

At June 30, 2012, an amount totaling \$4,258.28 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 reissuance 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 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 District Attorney's office is actively attempting to locate the owners of funds still in our accounts from unclaimed/cancelled vouchers. When all attempts have failed, those funds will be forwarded to State of Oklahoma unclaimed property for further action. Policies and procedures are in development.

**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](http://WWW.SAI.OK.GOV)