

STATUTORY REPORT

DISTRICT ATTORNEY DISTRICT 5

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

For the period July 1, 2009 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

**FRED C. SMITH, DISTRICT ATTORNEY
DISTRICT 5**

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

**FOR THE PERIOD
JULY 1, 2009 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) 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

January 22, 2013

Fred C. Smith, District Attorney
District 5
Comanche County Courthouse
Lawton, Oklahoma 73501

Transmitted herewith is the statutory report for the District Attorney of District 5, Comanche and Cotton Counties, Oklahoma (the District) the period July 1, 2009 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".

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

**FRED C. SMITH, DISTRICT ATTORNEY
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**FRED C. SMITH, DISTRICT ATTORNEY
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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.

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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

Fred C. Smith, District Attorney
District 5
Comanche County Courthouse
Lawton, Oklahoma 73501

For the purpose of complying with 74 O.S. § 212.E and 22 O.S. §§ 114, 991d, 991.f-1.1, and 63O.S. § 2-506, we have performed the following procedures as they relate to the records of the District Attorney's programs for the period July 1, 2009 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 are 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 Comanche, or Cotton 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

December 27, 2012

**FRED C. SMITH, DISTRICT ATTORNEY
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SCHEDULE OF FINDINGS AND RESPONSES

Finding 2012-1 Property Forfeiture Disbursements

Condition: Property forfeited is held by the local law enforcement agency, rather than the District Attorney's office. When the property is ordered forfeited by the court, the law enforcement agency holding the forfeited funds, deposits the money with the District Attorney. The District Attorney's office then writes a voucher to the law enforcement agency for the total amount forfeited. The District Attorney's office relies on the law enforcement agency to reimburse the money to the defendant as the court has ordered.

Cause of Condition: The forfeited property and money is not in the custody of the District Attorney as required by state statute. Therefore, the District Attorney relies on the law enforcement agency to keep all forfeited assets secure and to account for all assets.

Effect of Condition: The statute that established the procedures for control of forfeited assets is not being followed.

Recommendation: OSAI recommends the District Attorney follow the guidelines as provided by the state statute

Management Response: We are unique when compared to most other District Attorney's offices, in that we return one hundred percent of forfeited assets to the arresting agency, a policy I have endorsed for 28 years. Maintaining physical control of all items subject to forfeiture by this office is impractical. Further, until final disposition of the criminal case, those items are considered evidence and must remain in secure custody.

Criteria: Title 63 O.S. § 2-506 D. states in part,

All items forfeited in this section shall be forfeited under the procedures established in Section 2-506 of this title. Whenever any item is forfeited pursuant to this section except for items confiscated by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections, or the Office of the Attorney General, the district court of the district shall order that such item, money, or monies derived from the sale of such item be deposited by the state, county or city law enforcement agency which seized the item in the revolving fund provided for in Section 2-506 of this title;

Title 63 O.S. § 2-506 K states in part,

"Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the office of the district attorney of the county wherein the property was seized, subject only to the orders and decrees of the court or the official

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having jurisdiction thereof; said official shall maintain a true and accurate inventory and record of all such property seized under the provisions of this section. The provisions of this subsection shall not apply to property taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections or the Office of the Attorney General. Property taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections or the Office of the Attorney General shall be subject to the provisions of subsections E and F of Section 2-503 of this title.

Finding 2012-2 Inadequate Control Procedures over Bogus Check, Restitution and Diversion and Supervision Program Computer Systems

Condition: Upon discussion with the District Attorney's staff and observation of the internal controls over the District's computer system, we noted the following weaknesses in the security of the system:

1. A time out security measure has not been assigned in the system.
2. Employees are not required to log out of the system when leaving their workstation.

Cause of Condition: Log-on controls are initiated for new employees at the office level for all computers; however, other security features have not been implemented by the staff.

Effect of Condition: Because other employees can access the computers without proper log-on passwords, an opportunity for errors and misappropriation of assets exists. Override of the system by one employee, without proper approval, could also lead to misappropriation of funds.

Recommendation: OSAI recommends management be aware of these conditions and realize that additional controls are needed to engage the JustWare software and word processing software to ensure the credibility of accounting functions.

Management Response: We appreciate your concerns and suggestions and will take them into consideration as we continue to improve our office operations. As always, applying a specific accounting model with limited personnel and resources is a challenge.

Criteria: Accountability and stewardship are overall goals of management in the accounting of funds. To help ensure a proper accounting of funds, transactions should be identifiable by employee and corrections should be adequately approved and documented.

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Finding 2012-3 Lack of Segregation of Duties

Condition: Upon inquiry of the District Attorney's employees, it was noted in Cotton County, the duties of issuing receipts, balancing the cash drawer, preparing and delivering deposits to the County Treasurer, posting payments to accounts, and reconciling account balances to the County Treasurer are not adequately segregated for the Bogus Check, Supervision, and Restitution and Diversion Programs. One employee may perform all of these duties. Only one cash drawer is in use for all employees.

In Comanche County, one employee is responsible for receiving, receipting and posting payments. At the end of the day all monies over the amount kept as cash on hand and receipts issued for the day are then put in a locked box overnight. The following morning the supervisor reconciles receipts and monies, prepares the deposit and takes the deposit to the Treasurer's office.

Additionally, upon inquiry of the District Attorney's employees, it was noted in Comanche County, the duties of issuing vouchers, posting transactions to accounts, preparing claims, and distributing vouchers are not adequately segregated for the District Attorney Expense Account.

Cause of Condition: Written job descriptions and policies and procedures have not been developed to separate the key accounting functions of the office.

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: In order to provide an adequate segregation of duties, OSAI recommends management transfer the collection and disbursement responsibilities of the Bogus Check, Supervision, and Restitution and Diversion Program from Cotton County to Comanche County with all other accounting functions of the District. Each employee should be responsible for balancing their own cash drawer at the end of each day. With regard to the District Attorney Expense Account, we recommend that at least one other staff member be utilized in the payment of expenses, such as preparing the claims and disbursing of vouchers, so as to provide some mitigating controls in the disbursement process.

Additionally, we recommend that 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.

Further, 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.

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Management Response: We appreciate your concerns and suggestions and will take them into consideration as we continue to improve our office operations. As always, applying a specific accounting model with limited personnel and resources is a challenge.

Criteria: Accountability and stewardship are overall goals of management in the accounting of funds. An important aspect of internal controls is the safeguarding of assets. Internal controls over safeguarding of assets constitute a process, affected by management and other personnel, designed to provide reasonable assurance regarding prevention or timely detection of unauthorized transactions and safeguarding assets from misappropriation.

Finding 2012-4 Office Policy and Procedure Manual

Condition: Upon inquiry of the District Attorney employees, it was noted the District does not have a policies and procedures manual for the Bogus Check, Restitution and Diversion and Supervision Programs. A manual has not been developed so as to perform duties uniformly within the District and to train new personnel.

Cause of Condition: Policies and procedures addressing the receipt of monies, posting, depositing, write-off of fees or uncollectable accounts for restitution, supervision and fees have not been implemented.

Effect of Condition: Without written policies and procedures, an opportunity for errors and misappropriation of assets exists.

Recommendation: OSAI recommends the District develop a written policies and procedures manual that address policies such as the acceptance of cash for payment of restitution and fees, and the proper procedure for documenting uncollectable cases. Additionally, procedures should be established to safeguard assets from misappropriation, such as counting cash in the presence of another employee and separation of key functions such as receipting, recording and depositing funds.

Management Response: We appreciate your concerns and suggestions and will take them into consideration as we continue to improve our office operations. As always, applying a specific accounting model with limited personnel and resources is a challenge.

Criteria: Accountability and stewardship are overall goals of management in the accounting of funds. Internal controls over safeguarding of assets constitute a process, affected by management and other personnel, designed to provide reasonable assurance regarding prevention or timely detection of unauthorized transactions and safeguarding assets from misappropriation.

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Finding 2011-5 Expenditure Claims from Property Forfeiture and Supervision Programs

Condition: The review of Property Forfeiture and Supervision expenses from Comanche and Cotton Counties revealed the following weaknesses in the safeguarding of these funds:

- Invoices are not attached to a claim when submitted for payment.
- Receiving reports have not been filed to indicate the goods or services were received.

Cause of Condition: Procedures have not been developed to initiate the proper filing of claims for payment with regard to invoices and evidence of receiving goods and/or services.

Effect of Condition: When not properly submitted for payment, this condition could result in improper payments.

Recommendation: OSAI recommends all invoices be attached to claims with proper signatures approving the payment and verifying that goods and/or services were received.

Management Response: We appreciate your concerns and suggestions and will take them into consideration as we continue to improve our office operations. As always, applying a specific accounting model with limited personnel and resources is a challenge.

Criteria: Accountability and stewardship are overall goals of management in the accounting of funds. An important aspect of internal controls is the safeguarding of assets. Internal controls over safeguarding of assets constitute a process, affected by management and other personnel, designed to provide reasonable assurance regarding prevention or timely detection of unauthorized transactions and safeguarding assets from misappropriation.

Finding 2012-6 Supervision Fee Account Expenditures

Condition: The review of 56 Supervision Fee Account claims revealed a total 21 instances in which the expense was either for employee reimbursements or items not specifically used to defray the cost of the operation of the office:

- Ten instances were noted in Comanche County in which employees were reimbursed for purchases.
- Two instances were noted in Cotton County in which employees were reimbursed for purchases.
- Eight instances were noted, in Comanche County in which flowers, office décor, appliances and furniture had been purchased for a total of \$ 1,859.26.
- One instance was noted in Cotton County in which a coffee pot was purchased.

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Cause of Condition: The District has not designed and implemented policies and procedures to ensure that reimbursements to employees are prohibited or those expenses from the Supervision Fee Account are used to defray the cost of the operation of the office.

Effect of Condition: When purchasing procedures and policies are not followed, this condition could result in unrecorded transactions or misappropriation of funds.

Recommendation: OSAI recommends that the District establish purchasing policies and procedures for the expenditures for the Supervision Fee Account.

Management Response: We appreciate your concerns and suggestions and will take them into consideration as we continue to improve our office operations. As always, applying a specific accounting model with limited personnel and resources is a challenge.

Criteria: Accountability and stewardship are overall goals of management in the accounting of funds. To help ensure a proper accounting of funds the District should avoid reimbursing employees for purchases and avoid the purchase of items and equipment not specifically used to defray the expenses of the operation of the Supervision Program.

Finding 2012-7 Contingency Obligations Fund, Misstated Annual Reports

Condition: While reviewing the account activity of the District Attorney's office, we noted the County Treasurer had an account entitled, "Dist. 5 Cont. Obligations". At June 30, 2012, this account balance was \$600,000.00. Upon discussion with the financial administrator for District 5 in Comanche County, we were informed that the funds were set aside as a Contingency Fund to be used to pay accrued annual leave of employees of the District upon retirement and/or termination. This Fund was established by transferring a total of \$400,000.00 from the Bogus Check Fee Account and \$200,000.00 from the Supervision Fee Account during the period of fiscal year 2010-2011 and 2011-2012.

Cause of Condition: The District has transferred funds from the Bogus Check Fee and Supervision Fee accounts to a separate account.

Effect of Condition: The balances on the annual reports were misstated because of the transfers into the Contingency Obligations Fund. These transfers were reported as expenditures on the annual reports and are not reflected as funds available at the end of the fiscal year.

Recommendation: OSAI recommends that all funds be correctly reported on the annual reports that are submitted to the District Attorney's Council.

Management Response: We appreciate your concerns and suggestions and will take them into consideration as we continue to improve our office operations. As always, applying a specific accounting model with limited personnel and resources is a challenge.

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Criteria: Accountability and stewardship are overall goals of management in the accounting of funds. To help ensure a proper accounting of funds the District should avoid transferring fees to an unauthorized account.



OFFICE OF THE STATE AUDITOR AND INSPECTOR

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