

**THOMAS H. MAY  
DISTRICT ATTORNEY, DISTRICT 13  
STATUTORY REPORT  
FOR THE YEAR ENDED  
JUNE 30, 2002**

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STATE OF OKLAHOMA  
OFFICE OF THE AUDITOR AND INSPECTOR

JEFF A. McMAHAN  
State Auditor and Inspector

September 22, 2003

Thomas H. May, District Attorney  
District 13

Transmitted herewith is the statutory report for the District Attorney of District 13, Ottawa and Delaware Counties, Oklahoma, (the District) for the fiscal year ended June 30, 2002. 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 black ink that reads "Jeff A. McMahan".

JEFF A. McMAHAN  
State Auditor and Inspector

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## **INTRODUCTORY INFORMATION**

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 substances 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.



STATE OF OKLAHOMA  
OFFICE OF THE AUDITOR AND INSPECTOR

JEFF A. McMAHAN  
State Auditor and Inspector

**Statutory Report**

Thomas H. May  
District Attorney, District 13  
Ottawa County Courthouse  
Miami, Oklahoma 74354

For the purpose of complying with 74 O.S. §212 (E) and 63 O.S. §2-506, we have performed the following procedures as they relate to the records of the Property Forfeiture Fund for the fiscal year 2002:

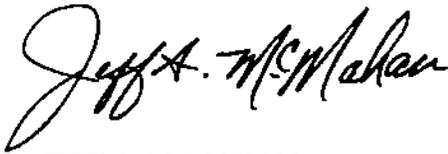
- We examined a group of receipts and deposit slips for propriety.
- We reviewed sale documentation for selected cases to determine whether forfeited assets were sold after due notice at public auction to the highest bidder in accordance with Title 63 O.S. §2-508C.3.
- For selected cases, the distribution of proceeds of the sale was reviewed to determine the distribution was in accordance with Court order pursuant to Title 63 O.S. §2-506K.
- We attempted to determine whether expenditures were used for enforcement of controlled dangerous substance laws, drug abuse prevention and education in accordance with Title 63 O.S. §2-506L.3.
- We attempted to determine whether expenditures were supported by approved claims, invoices, and independent verification that goods or services paid for were received in accordance with Title 63 O.S. §2-508C.3.
- We determined whether the District Attorney prepared and submitted an annual report to the Board of County Commissioners showing the total deposits, total expenditures, beginning and ending balances in accordance with Title 63 O.S. §2-506L.3.

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 Ottawa County or Delaware County.

Based on our procedures performed, District 13 is not properly receipting and depositing the proceeds of forfeitures; forfeited assets were sold without proper notice at public auction to the highest bidder; the proceeds of forfeitures were not distributed as directed by Court orders; and the District Attorney did not prepare and submit an annual report to the Board of County Commissioners. We could not make a determination on expenditures or annual reports. Our findings are presented in the attached Schedule of Findings and Recommendations.

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

Sincerely,

A handwritten signature in black ink that reads "Jeff A. McMahen". The signature is written in a cursive, flowing style.

JEFF A. McMAHAN  
State Auditor and Inspector

March 12, 2003

**THOMAS H. MAY, DISTRICT ATTORNEY  
DISTRICT 13  
SCHEDULE OF FINDINGS AND RECOMMENDATIONS  
JUNE 30, 2002**

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Finding 2002-1 - Missing Records

Criteria: Effective accounting procedures are necessary to ensure stewardship and accountability of public funds. Further, 21 O.S. 2001, § 590 requires state governmental entities to "maintain accurate and complete records, . . . reflecting all financial and business transactions, which records shall include support documentation for each transaction. No such records shall be disposed of for three (3) years thereafter."

Condition: All claims, invoices, and receiving reports were missing for fiscal year 2002, therefore, we were unable to determine that expenditures were supported by an approved claim, original invoice and verification of goods received due to missing documents. Furthermore, we were unable to determine that property forfeiture fund expenditures were used for enforcement of controlled dangerous substance laws, drug abuse prevention and education in accordance with 63 O.S. 2001, § 2-506L.3.

Effect: This condition results in noncompliance with state statutes and could result in misappropriation of assets.

Recommendation: All records should be retained for the period of time set forth in the Oklahoma Statutes.

Finding 2002-2 - Annual Reports

Criteria: Effective internal control procedures require reports to external agencies when appropriate. Furthermore, 63 O.S. 2001, § 2-506L.3 requires "... a yearly accounting to the board of county commissioners and to the District Attorney's Council," for the Property Forfeiture Revolving Account.

Condition: No annual reports were found for the Property Forfeiture Revolving Account.

Effect: Weakened internal controls and noncompliance with state statutes.

Recommendation: The District should prepare annual reports properly reflecting total deposits, expenditures, and beginning and ending balances and present the reports to the board of county commissioners and the District Attorney's Council annually.

Finding 2002-3

Criteria: According to Title 63 O.S. 2001, § 2-506K, 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 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.

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DISTRICT 13  
SCHEDULE OF FINDINGS AND RECOMMENDATIONS  
JUNE 30, 2002**

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Condition: Accurate inventory records of seized property are not maintained by the District Attorney's office.

Effect: This condition results in noncompliance with state statutes and could result in unavailability of funds and/or misappropriation of assets.

Recommendation: Accurate inventory records of seized property should be maintained by the District Attorney's office.

**Finding 2002-4**

Criteria: According to Title 63 O.S. 2001, § 2-503D, whenever any item is forfeited pursuant to this section. . . 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 63 O.S. 2001, §2-506.

Condition: Cash (\$1,243) forfeited (or relinquished) and ordered by the court to be deposited into the DA Drug Enforcement A8 Account, was not deposited into such account.

Effect: This condition results in noncompliance with state statutes and results in unavailability of funds and/or misappropriation of assets.

Recommendation: All cash forfeited should be properly and promptly receipted and deposited into the District Attorney's Drug Enforcement Account established with the County Treasurer. After making this deposit, the District Attorney may distribute the funds to other involved agencies (if any) as ordered by the court.

**Finding 2002-5**

Criteria: Title 63 O.S. 2001, § 2-508C sets forth that all property coming into the possession of the district attorney may be disposed of by order of the district court when no longer needed in connection with any litigation. If the owner of the property is unknown to the district attorney, the property shall be held for at least 6 months prior to filing a petition for disposal with the district courts.

The statute further provides detailed instructions for carrying out the disposition of forfeited property including:

- District Attorney is to file a petition with the district court that includes an attachment with a detailed description of the property; the date the property came into the possession of the district attorney, and the name and address of the owner, if known.
- The notice of hearing shall be given to every known owner, as set forth in the petition, by certified mail to the last known address of the owner at least 10 days prior to the date of hearing.

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DISTRICT 13  
SCHEDULE OF FINDINGS AND RECOMMENDATIONS  
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- The notice shall contain a brief description of the property and the location and date of the hearing.
- The notice shall be posted in three public places in the county, one such place being the county courthouse at the regular place assigned for the posting of legal notices.
- At the hearing, if no owner appears and establishes ownership of the property, the court may enter an order authorizing the district attorney to donate the property pursuant to subsection 1 of this section, to sell the property at a public auction to the highest bidder, or to convert title of the property to the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control for the purpose of leasing or transferring the property pursuant to subsection J or K of this section after at least ten days notice has been given by publication in one issue of a legal newspaper of the county.
- If the property is offered for sale at public auction and no bid is received that exceeds 50% of the value of the property, such value to be announced prior to the sale, the district attorney may refuse to sell the item pursuant to any bid received.
- The money received from the sale shall be used for the purpose of purchasing controlled dangerous substances to be used as evidence in narcotic cases and fees for informers, or employees and other associated expenses necessary to apprehend and convict violators of the laws of the State of Oklahoma regulating controlled dangerous substances. These funds shall be transferred to the revolving fund in that district for drug education and enforcement.  
(emphasis added)

**Condition:** Forfeited property was sold at a public auction by the District Attorney without a court order, petition, notice, publication, or hearing. Furthermore, forfeited property was donated without a court order to agencies other than those set forth in Title 63 2001, § 2-506.I.

**Effect:** This condition results in noncompliance with state statutes and results in unavailability of funds and/or misappropriation of assets.

**Recommendation:** The District Attorney should maintain strict compliance with Title 63 O.S. 2001, § 2-508 as it directs proper disposition of seized property.