

AUDITOR'S REPORT

DISTRICT ATTORNEY'S OFFICE STATE SEIZED AND FORFEITED ASSETS



January 24, 2014

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BARBARA J. SCHOTT, C.P.A.
HARRIS COUNTY AUDITOR

January 24, 2013

The Honorable Devon Anderson
Harris County District Attorney
1201 Franklin, 6th Floor
Houston, Texas 77002

RE: District Attorney's Office State Seized and Forfeited Assets for the twelve month periods ended August 31, 2011 and August 31, 2012

The Audit Services Department performed procedures relative to the District Attorney's Office State Seized and Forfeited Assets. The objective of the engagement was to audit the Fiscal Year (FY) 2011 and the Fiscal Year (FY) 2012 Chapter 59 Asset Forfeiture Report by Attorney Representing the State (Forfeiture Report), as required by the Code of Criminal Procedure, Chapter 59, Article 59.06 (g), as well as examine the seized and forfeited accounts and report the issues to Commissioner's Court in accordance with Local Government Code §115.0035. Our procedures included the following:

- Obtained the detailed records which support the information on the Forfeiture Report and performed the following:
 - Traced selected seizures to case file documents, including sworn statements by seizing agency, bank records, and other supporting documents to determine compliance with state statutes.
 - Traced selected forfeiture disbursements to case file documents, including the court order, check copies, and other supporting documents to determine compliance with court orders.
 - Traced forfeiture proceeds disbursed to the District Attorney and Commissioners Court to the County's financial records to determine whether proceeds were properly recorded.
 - Selectively tested forfeiture cases and reviewed interest earnings recorded in the County's financial records for accuracy and reasonableness.
 - Selectively tested expenditures of forfeiture proceeds to determine whether expenditures were properly approved and recorded, and in accordance with state statute.
- Reconciled the forfeiture fund balances recorded in the County's financial records to the forfeiture fund balances reported in the Forfeiture Report, and provided management with information concerning reconciling items.

The Honorable Devon Anderson
Harris County District Attorney

- Reconciled the seized fund balances recorded in the seized and forfeited database (Database) to the bank's records and the County's financial records, and provided management with information concerning reconciling items.
- Communicated to you verbally or in writing, the results of the examination relative to seized and forfeited funds pursuant to Local Government Code §115.0035.

A report on collateralization was not made available to us to evaluate whether seized funds for Fiscal Year 2012 were properly collateralized. As such, this resulted in a scope limitation and procedures in this area could not be performed during this engagement.

The engagement process included providing you with a combined engagement and scope letter and conducting meetings with your personnel. The purpose of the letter and meetings were to explain the process, identify areas of concern, describe the procedures to be performed, discuss issues identified during the engagement, and solicit suggestions for resolving the issues. A draft report was provided to you and your personnel for review.

The enclosed Auditor's Report presents the significant issues identified during our procedures, recommendations developed in conjunction with your staff, and any actions you have taken to implement the recommendations. Less significant issues and recommendations have been verbally communicated to your staff.

We appreciate the time and attention provided by you and your staff during this engagement.

Sincerely,



Barbara J. Schott
County Auditor

cc: District Judges
County Judge Ed Emmett
Commissioners:
R. Jack Cagle
El Franco Lee
Jack Morman
Steve Radack
Vince Ryan
William J. Jackson

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OVERVIEW

Chapter 59 of the Code of Criminal Procedure, *Forfeiture of Contraband* (Chapter 59), governs the seizure and forfeiture of contraband. Within 30 days of the seizure, the District Attorney must commence proceedings by filing a notice of seizure and intended forfeiture with the Clerk of the District Court. Notices of civil lawsuit are served on all owners and interest holders. Seized funds (e.g., money) are placed in certificates of deposit with the interest earned distributed in the same manner and for the same purpose as the principal. The seizing law enforcement agency maintains custody of the seized property.

Seized funds and property are forfeited to the District Attorney and the law enforcement agency based upon final judgment of the District Court and in accordance with local agreements executed between the District Attorney and the law enforcement agency. The District Attorney receives 30 percent and the County receives 3 percent of the District Attorney's share of forfeited assets for some cases. Article 59.06 (c)(1) requires the deposit of forfeited funds or proceeds from disposition of forfeited property in a "special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney solely for the official purposes of his office." The District Attorney may spend the forfeited funds after a budget has been submitted to Commissioners Court.

Chapter 59 also requires the District Attorney receiving "proceeds and property" pursuant to this chapter to annually "account for the seizure, forfeiture, receipt, and specific expenditure" of such proceeds in an audit performed by Commissioners Court. Chapter 59, Article 59.06 (g), requires that the audit be completed on the Forfeiture Report provided by the Office of the Attorney General, which is to be certified and delivered to the Texas Comptroller on Public Accounts and the Office of the Attorney General not later than the 60th day of the end of the agency's fiscal year, which is the twelve months ended August 31. The Forfeiture Report instructions, however, require the completed form to be returned only to the Office of the Attorney General.

RESULTS

Based upon procedures performed, the District Attorney appears to have materially complied with the provisions of Chapter 59 and County policies and procedures. No matters came to our attention that would cause us to believe that the Forfeiture Reports, submitted to the Attorney General's Offices during October 2011 and 2012, were materially misstated. However, the District Attorney should evaluate their forfeiture proceeds process and implement changes to facilitate depositing funds within five business days.

ISSUES AND RECOMMENDATIONS

Subject	Background	Issue	Recommendation	Management Response
<p>Deposit of Forfeited Funds</p>	<p>Upon forfeiture of seized funds via judicial action, the District Attorney closes the CD and instructs the bank to issue checks for the principal and interest. The checks for the District Attorney and Commissioners Court's portions of the forfeiture amount are forwarded to the County Treasurer's Office for deposit in the bank accounts, and are recorded in the County's financial records.</p> <p>At the time of our procedures for Fiscal Year 2011, Local Government Code (LGC) §113.022 required County officers to deposit funds, without exception, on or before the seventh business day after receipt of funds.</p> <p>Subsequently, at the time of our procedures for Fiscal Year 2012, Local</p>	<p>Forfeiture proceeds are not deposited and recorded in the County's financial records timely. Based on a review of 1455 forfeiture proceeds for FY 2011 transactions totaling approximately \$2,380,000, a majority (87%) were not deposited within seven business days per LGC §113.022.</p> <p>Based on a review of 1447 forfeiture proceeds for FY 2012 transactions totaling approximately \$2,520,000 a majority (92%) were not deposited within five business days per LGC §113.022. On average, checks were not deposited for three to four weeks.</p> <p>Delays in depositing forfeiture checks could result in reduced County revenue (bank account interest). In addition, there is the risk of additional loss</p>	<p>Although Management has improved timeliness since our last audit report, Management should evaluate their forfeiture proceeds process and implement changes to facilitate depositing funds within five business days after receipt, as required by LGC §113.022.</p>	<p>The District Attorney's Asset Forfeiture Division is responsible for generating and distributing thousands of cashier's checks each year. Due to the internal controls such as security measures, segregation of duties, and detailed scrutiny of each check (which often necessitates the return of checks to the bank for reissuance) there have been instances in which the District Attorney's forfeited proceeds were deposited later than five business days after the initial issuance of the cashier's checks.</p> <p>The internal controls are vital to the safeguarding of Harris County assets, and have ensured that no check in the possession of the Asset Forfeiture Division has ever been lost or misplaced and that none of the checks were incorrectly deposited as incorrect deposits would</p>

ISSUES AND RECOMMENDATIONS

Subject	Background	Issue	Recommendation	Management Response
<p>(Continued) Deposit of Forfeited Funds</p>	<p>Government Code (LGC) §113.022 was amended by Acts 2011, 82nd Leg., ch. 606 (S.B.37) §8, eff. Sept. 1, 2011, which required County officers to deposit funds, without exception, on or before the fifth business day after receipt of funds.</p>	<p>from possibly losing or misplacing checks that are held for lengthy periods.</p> <p>This issue was noted in a previous audit and management responded that due to the additional security measures and detailed scrutiny that each check receives (which often necessitates the return of checks to the bank for reissuance), there are instances in which the checks are deposited later than five business days after the initial issuance.</p> <p>In addition, management noted that any loss of bank account interest is offset by the fact that none of the checks deposited have been incorrect, which would have required additional time and effort on the part of the District Attorney, the Treasurer's Office, and Commissioner's Court to rectify any error.</p>		<p>require additional time and effort by the District Attorney's Office, the Treasurer's Office, and Commissioners court to rectify any error.</p> <p>The Asset Forfeiture Division has evaluated the procedures involved in the distribution of forfeited funds process and has made adjustments. We will continue to make every effort to ensure that deposits to the forfeited fund accounts are both timely and accurate.</p>