MOTOR VEHICLE LICENSING: A REVIEW OF INVENTORY AND AUDIT PROCEDURES

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Prepared by
James R. Roberts

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FOREWORD

The deaths of two county clerks while in office and the large liability they left to state and local government focused attention on the issue of methods to oversee the workloads of these local officers. The importance of the revenue collecting duties of the county clerks should not be underestimated; yet of equal importance is the adoption of clear and coherent state policies which allow clerks' tasks to be performed. As a result of changing technology, new legislative mandates and reorganizations of state government, state policies and county clerk office procedures have often been at odds.

In an effort to examine issues related to this subject, the 1984 General Assembly adopted House Concurrent Resolution 96, directing the Legislative Research Commission to study the audit and inventory practices of the county clerk's office. James Roberts was the researcher and author of this publication. Adell Kemper was the principal typist and Dr. Charles Bush the editor.

VIC HELLARD, JR.
DIRECTOR

The Capitol
Frankfort, Kentucky
November, 1985

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SUMMARY

The office of the county clerk is the focal point for many transactions of importance to the citizens of the Commonwealth. This study focuses on those activities relating to the issuance of motor vehicle registration documents. The study stresses the fact that the clerk's office does not operate in a vacuum. The clerk is dependent on receipt of clear and coherent policy from many agencies of state government.

In the recent past, the financial liabilities of two clerks who died in office have spawned several investigations into state management and oversight techniques. However, despite task force meetings, review committees and legislative proposals, no assurance that similar liabilities will not recur is apparent.

The 1984 General Assembly enacted House Concurrent Resolution 96 to study the policies and procedures relative to motor vehicle licensing. During the eighteen months over which this study was completed, involvement of all affected parties was a primary research goal. The study goes into great detail to document solutions offered by these review committees, in-house investigations and legislative proposals.

The proposals generated by these groups were numerous and diverse, but the goal was common. The impetus for change was to seek to establish an effective means of oversight of the transactions between clerks' offices and those state agencies which deal with them.

Despite the large quantity of recommendations which were fostered over the last decade, this study concludes with only three. They are as follows:

(1) The State Auditor's Office should be given the statutory authority and necessary funding to perform the final audits on county clerks' offices on a yearly basis;

(2) A funding source should be made available to the State Auditor's Office which would allow for a smooth implementation of an audit function. The funding for administrative costs should come from those taxes the clerk collects for state use. Such taxes include the motor vehicle usage tax, motor vehicle registration fees, and the property tax on motor vehicles; and

(3) Quietus legislation is not necessary nor warranted. Efforts toward final settlement of a clerk's account should focus on timely on-site audits and the opportunity for affected parties to issue timely challenges to the audit findings, if necessary.

These recommendations seek to establish the most effective means of oversight between state agencies and the county clerk. That method is through independent audits. A reasonable method for paying for the expense of these audits is outlined also. Despite the many solutions proposed by parties involved with the issues, the key is properly funded audits by an independent entity.

CHAPTER I

INTRODUCTION

The 1984 General Assembly of the Commonwealth of Kentucky passed House Concurrent Resolution 96, authorizing the Legislative Research Commission to study the collection procedures for motor vehicle registration fees and motor vehicle usage tax. The basis for this study is three-fold:

(1) The deaths of two county clerks while in office resulted in audits which revealed approximately $800,000 in fees due to the state from these clerks;

(2) From fiscal year 1979 to fiscal year 1983, only 387 of the required 720 audits on clerk's offices were performed. From 1981 to 1983 only 3 audits out of 360 were completed by the Transportation Cabinet; and

(3) Had 1984 House Bill 801 passed both chambers, it would have provided the clerk with a quietus on moneys owed if an annual audit had not been completed.

These three inter-related events led the General Assembly to conclude that a study of the procedures relating to the registration and titling of motor vehicles was in order. The resolution it passed specified that registration inventory, audit ability of the Automated Vehicle Information System (AVIS) and audit practices of the Transportation Cabinet be reviewed.

Method of Study

The bulk of the research for the present study consisted of interviews with county clerks and officials of affected state agencies. Talks were held with officials from the state Transportation Cabinet, the Revenue Cabinet, the Department of Information Services and the Department of State Police. The Transportation Cabinet and Revenue Cabinet receive the state fees and taxes which the county clerk is responsible for collecting. The Department of Information Services bears the burden of establishing the state computer system's capability related to the collection of these revenues. The Department of State Police conducted separate criminal investigations on the two aforementioned clerks found to be in arrears to the state.

Finally, it is not the purpose of this study to examine allegations past or current regarding any state or local office holder, but rather to present factual information related to the methods of collection of motor vehicle registration fees and usage tax. Examinations of the statutory duties of county clerks, registration procedures, audit responsibility, results of previous audits and current audit practices were the basis of the recommendations and conclusions of this study.

CHAPTER II

DUTIES OF THE COUNTY CLERK

After each Regular Session of the General Assembly, the Legislative Research Commission authorizes an updating of *Duties of Elected County Officials.* This publication is a comprehensive effort to outline duties of all county officials. It divides the duties of the county clerk into six major categories: duties as fiscal court clerk, licensing duties, recording and keeping of legal instruments, registration and election responsibilities, tax duties and miscellaneous duties.

The clerk's salary and office expenses are paid primarily from fees and compensation received from the administration of the duties. In Jefferson, Fayette, Kenton, Campbell, Daviess and Pike Counties, office expenses including salaries, may not exceed 75% of the amount paid to the Finance Cabinet during a given term. In those counties with a population less than 75,000, the clerk's salary is paid solely out of fees received and the fiscal court is required to determine the compensation of county employees, which includes deputies and assistants to county officers.[1] The county clerk and his employees are totally dependent upon the fees they receive in the execution of their duties. In some counties, the county clerk is not able to obtain his maximum statutory salary because of the lack of activities which generate the required fees.

The county clerk has numerous statutory licensing responsibilities as an agent of the state and county. The state duties deal with licenses for automobiles and trucks, watercraft, alcoholic beverages, grain warehousemen, professional occupations, marriages, military discharges and hunting and fishing. County licenses which are issued by the clerk include retail and entertainment and road house or fortune telling licenses.

The tax collection duties of the clerk are also numerous. Those tax collection duties include motor vehicle usage, tax on processes issued through the clerk's office, real estate transfer tax, delinquent taxes, and the ad valorem tax on motor vehicles.

These responsibilities have been outlined in such a manner as to point out that the study topic established by House Concurrent Resolution 96 contains only a small part of the statutory responsibilities of the county clerk. The motor vehicle registration fee is only one of ten fees which the clerk has responsibility to collect, while the usage tax is only one of five state taxes which the clerk is mandated to collect.

Recently Added Responsibilities

The 1980, 1982 and 1984 Regular Sessions of the General Assembly added major responsibilities to the county clerk's office. The 1980 General Assembly Session passed a

centralized motor vehicle titling procedure which designated that the county clerk initiate the paperwork on motor vehicle titles at the local level for processing in Frankfort. The 1982 General Assembly enacted a law which requires the county clerk to collect the ad valorem tax on a motor vehicle prior to its being registered. Finally, the 1984 General Assembly mandated that the county clerk be provided proof of motor vehicle liability insurance prior to vehicle registration.

The county clerk is undoubtedly the most appropriate local officer for processing taxes and documents of use to state government. Nonetheless, while duties were being added to the clerk's workload in recent years, state oversight over the management of the clerk's office was reduced. As previously stated, only three clerks' offices have received final audits from the Transportation Cabinet since fiscal year 1981.

CHAPTER III

PREVIOUS AUDITS OF COUNTY CLERKS' OFFICES

Since 1980, two county clerks have died in office and audits of their operations showed total deficits to the state of approximately $800,000. These circumstances prompted a series of internal investigations within the Transportation Cabinet and Revenue Cabinet. The inquiries revealed some basic problems with the Frankfort-based operation in the collection of motor vehicle usage tax and motor vehicle registration fees.

The Franklin County Audit

In September of 1980, the death of Franklin County Clerk Lloyd Russell caused an audit to be conducted prior to the reopening of the office under a new clerk. The audit covered the 1979 registration year and the 1980 year through the time of his death. In November of 1980, an internal report by the Division of Audit Review showed a total debt to the Division of Motor Vehicle Licensing of $26,023.64, including penalties.

The figures were displayed in the following manner:

TYPE	AMOUNT
Passenger Car	$ 7,996.89
Truck	11,207.53
Motorcycle	179.32
Dealer	69.00
Transfer	660.00
Special	625.00
Trailer	641.21
House Car	28.50
Penalties	2,260.42
	23,667.87
ADDITIONAL PENALTIES	2,355.77
	$26,023.64[2]

The initial memorandum completed by the Audit Review Division within the Transportation Cabinet noted only delinquent registration fees. The memorandum made

no mention of the motor vehicle usage tax deficit, which, although remitted to the Revenue Cabinet, is a receipt credited to the Transportation Cabinet.

The complete audit, done by Farmer and Humble and submitted on September 14, 1981, displayed some additional debts to both state and local offices. The final audit figures showed total debt for 1978 through August 31, 1981, to be in excess of $420,000. The schedule of debt was as follows:

State taxes

Motor Vehicle Usage	$267,670
Motor Vehicle Registration	26,023
Fish and Game Licenses	29,313
Legal Process Tax	450
Delinquent Property Tax	1,171

County Taxes

Excess fee due Fiscal Court	79,149
Deed Tax	10,221
Beer and Liquor Licenses	2,153
County Treasurer	68
County Board of Education	1,998
Paul Sawyier Library	78
County Attorney	597
Sheriff	170
Fish and Game License Dealers Commissions and Refunds	$ 5,039[3]

The largest portion of the deficit, which was to state officials, was found by November of 1980, as noted in the investigation report on file within the Department of State Police. However, the magnitude of debt was not clearly established until thirteen months after the death of Mr. Russell.

In addition, six weeks after the death of Mr. Russell, the Enforcement Bureau of the Revenue Cabinet submitted a memorandum to the Commissioner of Revenue on the reporting of usage tax by county clerks. The memorandum pointed to the fact that statutes in effect at the time of Mr. Russell's death would allow for almost a month delay in weekly reports. The example given showed that the report for the week ending September 27, could not reasonably be considered to be in default until October 21.[4]

The Enforcement Bureau at that point established a policy for refusing the 10-day extension allowed by law, except under extreme circumstances, and seeking legislation which could include a larger bond requirement, qualification testing of clerks and a removal-from-office provision.[5]

Some changes to the procedures for remittance of the usage tax were made as a part of 1982 House Bill 513. The changes include an amendment of KRS 138.464 to require daily rather than weekly reporting of usage tax receipts and impose penalties for failure to provide such reports. The Transportation Cabinet did not recommend an amendment to KRS 186.230, which applies to remittance of registration fees.

The in-house investigation on county clerk remittance by the Revenue Cabinet also revealed that, in the estimation of the Enforcement Bureau, four other counties show potential problems with usage tax remittance to the Revenue Cabinet: Christian, Edmonson, Grayson and Pike.[6]

The Floyd County Audit

The death of County Clerk C. "Ollie" Robinson in December of 1983 spurred another investigation. Documentation on this case is less accessible because of the continued involvement of the Department of State Police in this matter.

The Division of Audit Review was called into the Floyd County Clerk's office at the time of Mr. Robinson's death. The preliminary audit, completed prior to the reopening of the clerk's office, showed the following:

Motor Vehicle Usage Tax	$116,398
Motor Vehicle Registration Fees	288,989
	$405,387[7]

On this occasion, the State Auditor's Office was called in to perform a complete audit of the Floyd County Clerk's Office. The letter of transmittal was made to Governor Brown on July 25, 1983, some 8 months sooner than the Franklin County audit.

This audit showed additional liabilities of $147,671, including:

1. Bank overdrafts
2. Outstanding checks
3. Unpaid obligation
4. Delinquent taxes
5. Occupational taxes due county
6. Deed transfer taxes due county
7. Excess fees due county
8. Legal process taxes to Revenue Cabinet[8]

The main difference between the Franklin County and Floyd County cases is that the majority of the liability in Franklin County related to usage tax, while in Floyd County, liability was on the motor vehicle registration. A notable fact in the Floyd County case is that the unpaid obligations were still occurring in usage tax despite the amendments passed in 1982 to require daily reporting and the implementation of the Automated Vehicle Information System (AVIS).

Prior Knowledge of Problems

As mentioned in the review of the Franklin County case, the Revenue Cabinet had cited four clerks' offices as having potential problems with delinquent payments on usage tax. That 1980 listing, however, did not include Floyd County.

The Division of Audit Review within the Transportation Cabinet had also completed a debt sheet for Fiscal Year 1979-80. These obligations were derived by comparing the AVIS inventory of registration plates against fees remitted. The following list was generated.

FY 1979-80 AUDIT
Based on AVIS Inventory of
Plates vs. Fees Remitted[9]

COUNTY	OBLIGATION	COUNTY	OBLIGATION
Adair	Paid	Knox	$ 1,838.70
Allen	Paid	Larue	Paid
Anderson	Paid	Laurel	Paid
Ballard	Owed Nothing	Lawrence	Paid
Barren	Paid	Lee	$ 1,572.68
Bath	Paid	Leslie	Paid
Bell	Paid	Letcher	$16,307.03
Boone	Paid	Lewis	-0-
Bourbon	$125.86	Lincoln	Paid
Boyd	Paid	Livingston	Paid
Boyle	$74.02	Logan	Paid
Bracken	Paid	Lyon	$ 6,391.48
Breathitt	$828.29	McCracken	-0-
Breckinridge	Paid	McCreary	Paid
Bullitt	Paid	McLean	Paid
Butler	Paid	Madison	Paid
Caldwell	Paid	Magoffin	Paid
Calloway	Paid	Marion	$ 475.92

FY 1979-80 AUDIT
Based on AVIS Inventory of
Plates vs. Fees Remitted (continued)

COUNTY	OBLIGATION
Campbell	$1,404.47
Carlisle	Paid
Carroll	Paid
Carter	$8,170.77
Casey	Paid
Christian	Paid
Clark	$758.40
Clay	Paid
Clinton	Owed Nothing
Crittenden	Owed Nothing
Cumberland	Paid
Daviess	$976.26
Edmonson	Paid
Elliott	Owed Nothing
Estill	Paid
Fayette	Paid
Fleming	Paid
Floyd	$74,095.74
Franklin	$603.04
Fulton	-0-
Gallatin	Paid
Garrard	Paid
Grant	Owed Nothing
Graves	$661.72
Grayson	$7,337.10
Green	Paid
Greenup	$4,019.42
Hancock	Paid
Hardin	Paid
Harlan	Paid
Harrison	$242.96
Hart	Paid
Henderson	Paid
Henry	-0-
Hickman	Paid

COUNTY	OBLIGATION
Marshall	Paid
Martin	$8,445.12
Mason	Paid
Meade	Paid
Menifee	Paid
Mercer	Discontinued
Metcalfe	Owed Nothing
Monroe	$729.61
Montgomery	Paid
Morgan	$1,130.20
Muhlenberg	Paid
Nelson	$2,037.44
Nicholas	Paid
Ohio	Paid
Oldham	Paid
Owen	Paid
Owsley	Paid
Pendleton	$3,645.10
Perry	Paid
Pike	-0-
Powell	Owed Nothing
Pulaski	$2,406.47
Robertson	$180.54
Rockcastle	Paid
Rowan	$2,671.15
Russell	$562.98
Scott	Paid
Shelby	$3,627.30
Simpson	Paid
Spencer	-0-
Taylor	$1,871.42
Todd	Paid
Trigg	Paid
Trimble	-0-
Union	Owed Nothing

FY 1979-80 AUDIT
Based on AVIS Inventory of
Plates vs. Fees Remitted (continued)

COUNTY	OBLIGATION	COUNTY	OBLIGATION
Hopkins	$7,445.66	Warren	Paid
Jackson	Paid	Washington	$3,029.66
Jefferson	$114,084.65	Wayne	$1,380.05
Jessamine	Paid	Webster	Paid
Johnson	Paid	Whitley	Paid
Kenton	$24,119.04	Wolfe	Paid
Knott	Paid	Woodford	Paid

The list is notable in three instances, the first two are the reported liability of the Franklin and Floyd County clerks. The fiscal year debt of this recordkeeping audit show a $603.04 debt in Franklin County and a $74,095.74 debt in Floyd County

The recordkeeping audit done by the Division of Audit Review in 1979 was obviously inaccurate. However, in comparing those audit figures with the data compiled upon the death of the county clerk it is not possible to pinpoint the exact time of the errors. The audits done upon the clerk's death were by calendar year and the Audit Review staff's audit was by fiscal year. Although the recordkeeping audit was extremely inaccurate, this discrepancy between it and the final audit is difficult to ascertain because later reports are based on a calendar-year system.

However, a third noteworthy case from the 1979-80 audit is that of Jefferson County. The debt accountable to county clerk Bremer Ehrler at that time was $114,084.65. Mr. Ehrler took issue with this amount, but did not receive satisfaction of an audit until the Spring of 1984. In May of 1984, an on-site audit by the Division of Audit Review reduced the Jefferson County Clerk's liability to $7,457.78. Mr. Ehrler paid that amount and settled his account for that year.[10]

Conclusions

Some county clerks interviewed for the present study felt that the Franklin and Floyd County clerks could have reduced their liability had they been alive to defend their office practices. Certainly, the disposition of the Jefferson County case encourages that assumption, but, based on the magnitude of liability in the other two cases, it is difficult to accord it high probability.

Rather, it should be contended that in all instances the recordkeeping inventory by the Division of Audit Review was erroneous. Only by the method of on-site audits were final figures relating to liability derived. The next chapter analyzes the problem related to the recordkeeping audits.

CHAPTER IV

ISSUES PERTAINING TO STATE AUDITS OF COUNTY CLERKS

County clerks, as Chapter I shows, engage in a variety of fee and tax collection activities. A review of the types of fees and taxes collected shows that the county clerks' activity is approximately 85% state-related and 15% local. The bulk of the clerk's time is spent as an agent of various state agencies.

The clerk's three biggest responsibilities are motor vehicle usage taxes, motor vehicle registration and motor vehicle ad valorem taxes. In addition, the clerk is an agent for the Department of Fish and Wildlife, the Cabinet for Human Resources and his county fiscal court. Because of the variety of duties the clerk performs, he is subject to scrutiny by the agencies he serves. Audits could prove to be numerous and therefore disruptive.

This type of system leaves the clerk with little protection for appeals, if he should question an auditor's impartiality. Sometimes the administrative methods utilized by a state agency are so casual that verification of information becomes impossible.

Inventory Issues

In the summer of 1983, the Bureau of Vehicle Regulation conducted an in-house review of several aspects of vehicle registration procedures. According to a memorandum dated July 28, 1983, from the Director of Motor Vehicle Licensing to the Director of the Division of Audit Review:

> . . . From the time the plates and decals are manufactured until they are delivered to the County Court Clerks, there is no inventory taken. Therefore, the Division of Motor Vehicle Licensing is never sure that the numbered products they requested have been produced or delivered to the clerks . . .[11]

The same memorandum points to similar problems with the registration receipts.

> The certificates are manufactured by an outside source. After the items are manufactured, they are shipped by the manufacturer directly to the County Court Clerks. The clerk signs the freight bill, however, they do not retain a copy. It is apparently retained by the freight company.
>
> The Director of Motor Vehicle Licensing signs the approval for payment of the certificates without acknowledging the items have been delivered.
>
> Certificates are the documents that give the owners title to their vehicles, and as such, it is important to maintain an accurate and accountable

record. Presently, with Motor Vehicle Licensing not being able to identify what was sent to the County Clerks, there are not accurate or accountable inventory records for the counties. Also, the Cabinet may be paying for duplicate certificates and in some cases paying for certificates that have not been received by the clerk.[12]

Legality of Documents

The July 28, 1983, memorandum also discusses the issue of legality of the documents related to delivery and inventory to be signed by the county clerk. The forms recording the delivery of items from the Transportation Cabinet to the clerk contain a statement which the clerk is required to sign. The clerk's signature says that the delivery of supplies has been accepted and the signed forms become legally defensible documents.

However, the inventory count is recorded on a separate form. This document pertains to the inventory of plates, transfer documents and decals, and contains no statement of certification. The officials within the Cabinet were advised by their legal staff that without certification of quantities and an explanation by the field representative that the clerk is accepting responsibility for the count, the form is not legally defensible.

A reference in the memorandum stated that in a recent case, the point was made that the documents were not legally binding and the clerk could be relieved (through court action) of any financial obligation to the Cabinet. The recommendation made by this section of the memorandum was that a statement of certification be included on the forms pertaining to inventory and the field representative explain to the clerk that by signing the document, he is accepting responsibilities for the stated quantities.[13]

The implementation of this recommendation would immediately shift financial obligation for inadequate inventory to the county clerk. The clerk is required to make registration items available to the public, yet he has little recourse, in cases of inventory error, other than to protest inaccuracies to the department.

The solution is obviously for the clerk to count the items of shipment. Two problems could occur with that approach. The department's field representative may not be willing to wait for that count. Secondly, in some instances, plates arrive at the clerk's office days after they are officially slated to go on sale. The clerk may then yield to constituent pressure to sell the plates without taking a proper count.

The solution to the inventory problem is not best served by shifting liability through a legally defensible document. That document, though legally binding, could still contain errors, which demonstrates the importance which should be attached to final audits.

Agency Response

The Director of the Division of Motor Vehicle Licensing responded to the report of the Audit Review Division in August of 1983. This report to the Commissioner acknowledges that serious problems existed with the inventory and accounting system for registration and titling. The explanation of this situation was two-fold:

(1) the problems which had been related were generally known, but under emphasized by top management; and

(2) the change to the automated registration system and the centralized title system, as well as the shortage of staff within the Division, prohibited the recommendations of the report from being implemented.[14]

The memorandum to the Commissioner concluded in the following manner:

> To summarize, the audit report was developed and presented in a generally accurate and realistic format. The report makes clear that simply reworking the existing inventory and accounting system using only those resources which are currently available will not produce an end product that the department may desire. The inventory and accounting system is simply too complex to try and simplify.
>
> Oversimplification has been one of the main reasons why we currently do not have an accurate system. If the Department of Vehicle Regulation intends on adopting most of the recommendations as presented in the report, then the Transportation Cabinet must be prepared to support the hiring of a minimum of 33 additional employees. The cost for this type of commitment could easily exceed $500,000 per year.[15]

Conclusions

The officials within the Department of Vehicle Regulation generally concluded in 1983 that their check-out procedures were less than desirable. Briefly, the department ended each year without legally defensible documents for post-audit. The looseness of the inventory system was also reflected in the erroneous billings which clerks received regarding their 1979-80 inventory. Although these inventory problems are not the responsibility of the county clerk, the Department could conceivably exercise the authority to shift them to the clerk.

According to the data compiled in conjunction with this study, the root of the clerk's problems are not necessarily self-induced, but result from a neglected pre-audit and inventory system in Frankfort. Although these shortcomings occurred in a previous administration, the current administration should nonetheless seek a rational solution to these documented problems.

CHAPTER V

REACTIONS TO COUNTY CLERKS' PROBLEMS

Changes to the Inventory System

On January 3, 1984, the State Auditor's Office noted deficiencies in the Transportation Cabinet's method of recordkeeping. *The Report of the Auditor of Public Accounts Audit Examination of the Transportation Fund and Transportation Cabinet* concludes that procedures within the Motor Vehicle Licensing Section need to be improved. Inadequate procedures and failure to maintain proper documentation resulted in the inability of the Cabinet to determine whether proper fees had been received. Specific problems noted in the auditor's report occurred in Floyd County and Jefferson County. However, it is an additional statement in the auditor's report which merits the most attention:

> This annual reconciliation (between the County Clerks and the Transportation Cabinet) should be imperative for all county clerks and particularly for clerks with large amounts of revenue involved.[16]

In 1984, three other events relating to the licensing issue occurred. These included a response from the Transportation Secretary on issues raised by the County Clerks' Association, an AVIS study committee and a newly proposed inventory reporting system.

Two issues raised by the County Clerks' Association in a communication to the Governor's Office related to the inventory matters. The first issue dealt with a change in the procedure of filing the weekly reports.

The letter from the Secretary of Transportation alluded to a change in the weekly reporting procedure which would require the county clerks to file their weekly report by plate and decal numbers from the certificate number. The basis for such a change was the fact that the plates and decals were the auditable items in the transaction. The Cabinet would produce an internal report generated by plate and decal number to be used by its audit staff.

The clerks' association opposed the move to file by plate and decal number. Since they still have to maintain files by certificate number, in order to supply usage tax information to the Revenue Cabinet, filing by plate and decal number would require dual systems for the clerks. Moreover, clerks feel that filing by certificate number is more efficient.

In some cases, when an error occurs, a certificate is voided and a new plate and decal reissued. On those occasions, the voided certificate allows credit to the clerk, however, unless the Cabinet notes the action, the clerk retains liability. Only an audit will reveal actual liability unless the system has capability to note voided transactions.

The Revenue Cabinet also has to use information on the registration certificate. This Cabinet is responsible for usage tax and property tax, which is paid on registration. Reporting by plate and decal number does not lend itself to subsequent use by the Revenue Cabinet, in the clerks' estimation.

Finally, many clerks have multiple locations for registration. As a result, plates and decals must be provided to those locations. If reports are made by decal number, the clerk will have to spend more time reviewing transactions to prepare proper documentation. Conversely, the automated system assigns a certificate number which would be more readily accessible for use by both Transportation and Revenue Cabinets.

Some clerks felt that their office practices and work would be unjustifiable complicated by this recommendation, but that, despite their opposition, it would probably be implemented. In addition, they argued, the adoption of this departmental policy would provide no solution to the main concern of completion of timely audits.

The major issue for the clerks was that they had not received timely audits; some still face audits for 1979 to 1980. The clerks' request, as passed to the Governor, was for release of audits for 1981 and 1982.

The Secretary of Transportation corresponded through Larry Hayes in regard to the audit issue by making the following statement:

> . . . the clerks raise the issue of updating audits from 1979 through 1982. While the Cabinet is moving toward such a goal, again, I feel it is important from our own perspective to point out that this problem is a problem which was created by the Brown Administration over a four-year period, and one which cannot be solved in thirty days. The auditors have just been released, under this administration, to return to the field and begin the audit process necessary for resolving the problem . . . .
>
> While I am certain the request for a release of audits for 1981 and 1982 is a sincere and genuine request toward the joint concern of timely audits and limited liability, the Transportation Cabinet bears the responsibility of protecting the interests of the Commonwealth. As such, we cannot and should not merely release the clerks for these audits without a good faith effort to determine whether or not they have complied with the law and whether all funds due have been remitted. This is especially important when considering the present budgetary constraints under which we are all operating.
>
> An additional concern which we have is that if the (weekly) reports are changed and clerks' files can be effectively utilized we would be able to expedite these audits. As I mentioned before, when the AVIS system went into effect in 1982 the clerks began to change their filing system and their weekly reports, thus making their own audits nearly impossible.[17]

This exchange of correspondence shows that the clerks were continuing their effort to receive audits, and the Secretary of Transportation was increasingly aware of the at-

tendant problems. The point re-emphasized by this exchange is that the Secretary of Transportation had acknowledged that the mechanics of the audit of clerks had become "nearly impossible."

One day after the date of the correspondence from Secretary Floyd Poore to Cabinet Secretary Larry Hayes, a report which listed fifteen recommendations for modification of AVIS was issued. Essentially all of these recommendations related to changing the inventory or reporting procedures. The AVIS Review Committee made the following recommendations:

- That the Transportation Cabinet place one or more staff persons at the prison facility to assume quality control. In accordance with this, that the Cabinet begin making use of a bill of lading to indicate the quantity and substance of shipments from the prison to any warehouse facility.

- That all inventory, plates and decals specifically be checked prior to any shipment from the warehouse to the county clerks. In accordance with this recommendation, that all inventory to be shipped be noted on a bill of lading.

- That prior to a county clerk's receiving inventory, said shipment should be inventoried by the clerk upon receipt. After it is received, the county clerk should sign the bill of lading (noting any additions or deletions), indicating he has received all items listed thereon.

- That the inventory shipments to the county clerks need to be broken down into not less than four annual shipments. These shipments need not necessarily be quarterly shipments, but should be based upon individual needs. This is recommended in order that large shipments can be broken down into quantities manageable for a proper and complete inventory.

- That a printer and terminal be placed at the warehouse where the plates are inventoried in order to put into the computer a list of all inventory which a county clerk receives.

- That a year-to-date inventory and accounting report should be developed. A report could then be provided upon request of the Auditing Department.

- That the unique identifying number placed on the certificates be deleted and that a number be generated by the computer for each transaction on the AVIS system. This practice may create problems, in that when the AVIS system incurs downtime, no transaction may occur. Prior to this time, clerks were issuing registrations, as well as other transactions, and placing them in the system after the AVIS system was functional. This practice would be eliminated, resulting in the shutdown of a county clerk's office.

- That the Cabinet look at the staffing of the Pre-Audit Division. The staff needs to be increased in number along with the increase in responsibilities. The pre-audit function should be carefully examined, redefined and utilized in a more responsible fashion.

- That the receipt of mail, such as the receipt of checks from the county clerks, be performed by a branch other than the Pre-Audit Branch, in order to insure security within the system.

- That a report printed on a year-to-date basis listing only the exceptions (plates, decals, and certificates not used) should be generated for use by both Pre-Audit and the county clerks.

- That dual reports be issued for the Pre-Audit Branch. One report should list all decals and plates issued, by the decal and plate number. The second report would list the certificate numbers issued, by certificate number.

- That the county clerk enter the necessary corrections and changes to the weekly report into the system, as opposed to merely remitting his changes to the Pre-Audit Branch. It is further recommended that the Pre-Audit Branch bear responsibility for reconciling the weekly report with the changes and corrections entered by the clerk with the corrected data base.

- That whatever action is necessary be taken in order to revise the clerks' report per their request, concerning the report issued by the Revenue Cabinet.

- That the Transportation Cabinet look at the staffing level and the facilities of the warehouse in order to accomplish the prior stated goals of inventory checks and balances.

- That the Transportation Cabinet require, by regulation pursuant to statutory authority, that all county clerks file this copy of the certificates of registration by license plate number. This final recommendation, which passed by a slim majority, was the single most controversial recommendation. It should further be noted that the county clerks' association representatives did not concur with this recommendation.[18]

Finally, on October 11, 1984, the Department of Vehicle Regulation, in conjunction with the Department of Information Services, proposed a computerized audit and inventory system. As justification for this proposal, the Vehicle Regulation personnel pointed out some additional flaws in the existing system. The basic problem cited was that AVIS since its inception had had to rely on a manually produced inventory system. The result was that the computer system had inherited those problems which accompanied the manual examination of inventory.

The result of this review was the proposal of an automated inventory system within AVIS. The inventory reporting system would propose the following changes:

- Provide for automation of the ordering, production, receiving, shipping and clerk's office receiving processes for plate, decal and certificate inventory items and the integration of this process into the AVIS. Automation of this operation will require computer printing of two new forms: the Prison Industries Plate/Decal Order Form and the Motor Vehicle Licensing Plates/Decal Shipping/Receiving Notice.

- Require an allocation of inventory (plates, decals and certificates) by sub-office for counties with multiple office locations.

- Require equal distribution in the shipping of inventory items to the clerks' offices throughout the twelve months of the year.

- Require more emphasis on quality control in the production, receiving and checking of inventory by the Motor Vehicle Warehouse and the receiving, checking, reporting and correction of inventory by the county clerk's offices.

- Provide a method of preventing the resale and/or reporting of inventory items that have been reported as exceptions (void, missing, duplicate, returned to DVR, etc.) by the county clerk's office or the Division of Motor Vehicle Licensing.

- Provide to the clerks' offices on a weekly basis a modified (most current 13 weeks) year-to-date listing of inventory errors/conflicts which the clerks' offices are responsible for correcting.

- Provide to the county clerks' offices a weekly report for all types of inventory (plates, decals and certificates), of inventory allocated (original and supplemental), inventory issued for the week, inventory issued year-to-date, and inventory balance.

- Provide the clerk's office with a new correction screen for (1) weekly report corrections, (2) inventory corrections, (3) inventory exception updates, (4) correction inquiries, (5) AVIS data base registration updates and (6) weekly reporting of temporary license plates.

- Provide for the automation of the printing of weekly report corrections in the clerk's office and ensure that report corrections are kept in sync with AVIS data base changes/corrections and vice-versa and that the corrections/adjustments are done in a standard manner and uniform format by all counties.

- Provide to the county clerks' offices a quarterly year-to-date transaction listing and exception listing of inventory items allocated, sold or reported and inventory errors/conflicts which the clerks' offices are responsible for correcting.

- Eliminate the Inventory Exception List Screen, Inventory Exception Update Screen and the Inventory Exception Data Base and the subsequent costs associated with the maintenance of these screens and files.

- Eliminate the updating of Motor Vehicle Licensing personnel of the inventory from and to ranges into the range table file when inventory items are shipped to the clerk's office.[19]

These recommendations and study groups activities have been noted to point out that state agency personnel, from the Secretary of Transportation through the employees affected by the inventory problems, have actively pursued remedies to the clerks' situation.

In some instances, recommendations were instituted, but by and large, the clerks' problem of the lack of close out audits has remained the same.

Issues Raised From Clerk Interviews

The interviews which have been conducted in clerks' offices throughout the state show that some have received letters closing out 1979 or 1980. The clerks have approximately three years of current potential liability. This means that each clerk still bears the responsibility of hands-on access for audible items over three years old.

Space limitations in many clerks' offices prohibit the retention of documents for such a length of time, but because of the potential liability, they must be kept. In addition, the small decals which are to be attached to license plates are easily misplaced. A majority of clerks still have January 1984 decals in their offices, and although cabinet personnel in some cases have obtained a count, the decals in all cases have to be retained until clearance is received.

The potential for accidental loss of documents is great. Some clerks told of registration voids which were thrown away by janitorial help or misplaced decal books. These innocent mistakes could become assessable because they relate to a specific inventory item, or the voided transaction may have to be verified in subsequent audits.

All parties agree the clerk will make mistakes, but if those mistakes become compounded because of the lack of timely audits, it is the clerk who stands to suffer. The clerks also noted that occasionally they might receive a call from the Department of Vehicle Regulation to re-enter a particular transaction because of an error at the central office, yet a mistake at that level occurs without threat of punitive actions against the offender.

The clerks maintain that errors will be made, but that if audits are not timely, too much time passes before those errors are caught. The reports submitted by the clerks are reviewed by the administrative agency. If the personnel in Frankfort miss an error, the liability for that error is retained by the clerk. As a result of the lack of final audits, the liability could continue for several years.

In addition, the clerks are penalized for mistakes. Again the mistake may not have been caught by the reviewing personnel in Frankfort. However, if the mistake surfaces in a subsequent audit years later, a monetary penalty is assessed from the date of transaction.

With regard to retention of liability or assessment of penalties, the clerk does not have the ability to collect the lost revenue or generate the penalty funds without use of excess funds which would accrue to fiscal court or payment out-of-pocket.

Timely audits will reduce the loss of auditable items due to overcrowding of a clerk's office or long-term storage with material from other county offices.

The basic issue to the clerks in regard to these matters is completion of audits. The

audit should uncover innocent mistakes, allow time to make proper restitution to the affected party and discourage fraud.

In addition, timely audits would permit restitution to the state out of funds which would otherwise be lost to the clerk. The county clerk transmits excess fees to the county on a yearly basis. The time lapse between the audits means that fees that could have been used for restitution have already been turned over. Any liability of the clerk must then either come out of pocket or be remedied through fiscal court.

CHAPTER VI

LEGISLATIVE PROPOSALS PERTAINING TO COUNTY CLERKS

The previous chapters have noted various administrative activities which resulted from the Franklin and Floyd County cases and the demands of the County Clerks' Association. The activities already noted are primarily those of task forces, study committees or in-house reviews. This chapter will deal with tangible proposals occurring as an outgrowth of those study groups.

Revenue Cabinet Proposals

The Revenue Cabinet became quite interested in the county clerk situation after the Franklin County case. The state police investigation files note an in-house review of county clerk procedures. The review points to four areas of legislation which were identified as necessary to prevent another Franklin County incident:

(1) Changing the reporting system to avoid granting of numerous extensions and permitting late filing of weekly reports;
(2) Requiring either a larger bond or an increase in the 1% penalty after delinquency is determined;
(3) Establishing a qualification test for county clerk candidates; and
(4) Developing procedures which would make it easier to remove a county clerk from office.[20]

Since those recommendations were made, two have been enacted into law. 1982 House Bill 513 adopted the provisions relating to increased bonds, required daily deposit for usage tax and increased penalties for late reporting.

House Bill 513 amended KRS 62.055(2) in the following manner:

- In counties containing cities of the first class, bond requirements were raised from $200,000 to $500,000;
- In counties containing cities of the second class and counties containing urban-county governments, bonds were raised from $100,000 to $400,000;
- In counties containing a city of the third class, but not a city of the first or second class, bonds were raised from $50,000 to $100,000;
- Previous to 1982, the $50,000 bond was required in all other counties; House Bill 513 raised the bonds to $75,000 for counties whose largest municipal population was a fourth or fifth class city; and counties whose largest population was a sixth class city retained the $50,000 bond.

In addition, House Bill 513 amended KRS 138.464 to require daily reporting of usage tax by the clerk, increase the penalties for late filing and reduce the incidents of request for late filing.

Extensions must now be requested prior to the end of the seven-day period and they begin to run at the end of that period. All penalties collected under this provision shall be paid into the state treasury as a part of the revenue collected under KRS 138.450 to 138.729.

House Bill 855, introduced in 1984, would have established standards and testing of potential county clerk candidates. The legislation made no specific provision as to the areas a test should cover, but merely specified that the test be prepared by the Department of Local Government in cooperation with the state auditor and the state local finance officer. The bill failed to be reported from the House Counties and Special Districts Committee.

Transportation Cabinet Recommendations

Interestingly enough, the Transportation study groups made no legislative recommendations for changing reporting or inventory procedures. Although some changes were made, most were made by amending departmental in-house policy. The Transportation Cabinet could have recommended changing the reporting of license fees from weekly to daily and increasing those penalties for delinquencies, but did not.

Finally, neither the Revenue nor the Transportation Cabinet sought to change or adopt new policies for the timely completion of audits by any branch of state government.

House Bill 801, introduced in the 1984 Regular Session, would have required either a yearly audit from the Transportation Cabinet or a quietus; this legislation was the result of a recommendation of the County Clerks' Association. House Bill 801 passed the House of Representatives 77-7, but was not reported from the Senate Transportation Committee.

Effects of the Legislation

The legislation which passed as part of 1982 House Bill 513 was designed to resolve some of the reporting problems within the Revenue Cabinet. The Floyd County Clerk operated for nine months under the daily reporting and remittance program. The auditor's report showed a $55,926 liability to the Revenue Cabinet for usage tax in 1982. Although the audit figures are not broken down by calendar year, it should be assumed that some of the liability occurred after the effective date of the 1982 legislation. This assumption is reaffirmed by the Auditor's statement that daily receipts were not deposited promptly nor were they intact.

However, it should be remembered that final determination of liabilities was not made until on-site audits were performed in Franklin, Floyd and Jefferson Counties. So HB 513 didn't go far enough , in terms of assuring accountability.

Policy Changes Within The Transportation Cabinet

Despite the lack of legislative activity to resolve the inventory and audit problems of the county clerk, the Transportation Cabinet has not been inactive. The in-house study groups referred to earlier have made approximately thirty recommendations. The changes which would be the most significant would be the shift to an AVIS-generated certificate number and the inclusion of the inventory of registration items in the computer system.

Both of these changes would aid in making the shift from a manual audit system to an automated system. The present manual audit system has fallen behind the technology available through AVIS.

Use of the certificate number being produced by the computer will speed up the audit of decals and plates. This system, coupled with the inventory being loaded in AVIS, should also reduce the need for an on-site audit to review errors, voided transactions and current inventory. These changes reflect the initial legislative intent of KRS 186A.010,"to ensure the development of a common vehicle information data base to improve efficiency in auditing motor vehicle usage tax, license fee collections and in collecting personal property tax..." This intent clause was enacted by the General Assembly in 1976.

Failure to Implement the Inventory and Audit System

The failure to implement a computerized inventory and audit system prior to this date is easily understood when the legislative demands on AVIS are reviewed. Since the initial enactment of an automated vehicle information system in 1976, the legislature placed the following burdens on this system.

(1) Funding of a pilot program of automated registration in 19 counties (1978);
(2) Enactment of a centrally produced certificate of title for motor vehicles produced through the automated system (1980);
(3) The addition of ad valorem taxes being collected on motor vehicle prior to registration (1982); and
(4) Requiring proof of insurance prior to registration of a motor vehicle (1984).

Meeting the specific priorities of any of these legislative acts required a restructuring of AVIS. The general intent provisions of KRS 186A.010 received a lower priority than these legislatively mandated functions.

However, it should also be emphasized that in 1980, both the Transportation and

Revenue Cabinets were reorganized to decrease the emphasis on audit responsibility on taxes and fees on motor vehicles. If this de-emphasis was undertaken in the hopes of upgrading AVIS according to the intent of 186A.010, it was not successful.

Conclusions

The basic conclusion which can be made from the flurry of legislative and administrative policy changes from 1979 to the present is that the accuracy of the financial records of a particular county clerk has only been determined through on-site audits. The question which remains is whether 1984 House Bill 801 is the best method of determining liability.

The following chapter's examination of the legal implications of a quietus and the state's ability to engage in on-site audits would be better understood if a few facts were restated:

(1) Despite the enactment of the statutes incorporating auditability within the automated vehicle information system in 1976, no move to enhance this system's audit capabilities occurred until 1984;

(2) Executive reorganizations which ignored the importance of county clerks' audits in 1979 seemed unaffected by three separate incidents. This situation reaffirms the state's inability to balance its books through weekly or daily reports;

(3) One factor contributing to the state's inability to prioritize the audit capability of AVIS was the legislative policies which sent the Department of Information Systems in other directions.

(4) Many county clerks still face the prospect of having accounts more than four years old audited.

CHAPTER VII

1984 HOUSE BILL 801

The problem of the lack of final settlements with the county clerks was brought to the attention of the General Assembly during the 1984 Regular Session. House Bill 801 sought to require the Transportation Cabinet to audit the county clerks annually. In addition, the clerks would either receive a quietus or be charged for money still owed. The legislation would have required the issuance of the quietus, even though an audit was not completed.

House Bill 801 passed the House of Representatives by a vote of 77-7. The bill was not reported from the Senate Transportation Committee. The Senate's reservation concerned the effect of the quietus on the state's ability to collect money subsequently found to be owed by a clerk.

On the same day that House Bill 801 was assigned to the Senate Transportation Committee, a House Concurrent Resolution 96 was reported by the same committee; it called for a study of the motor vehicle registration inventory system. This action was a compromise effort to take the clerks' concern into consideration without taking an action which might absolve the clerk from any debt resulting from oversight.

There is precedent for the clerks' request for a quietus. Sheriffs have received a quietus from the Revenue Cabinet for years. The legal ramifications of a quietus on sheriffs' debts have raised questions, however.

Statutory References to Quietus

KRS 134.330 states that no tax bill or book shall be delivered to the sheriff after May 30 of his second or subsequent year in office, unless the sheriff shows a quietus (a settling of accounts) from the Revenue Cabinet for the preceding tax period. The purpose of this statute is to close out the sheriff's previous year's liability prior to the start of another tax year. The clerks wish to receive the same final settlement of debt.

KRS 64.830(2) requires a quietus from all outgoing county officials by March 15 immediately following the expiration of their terms of office. The final settlement is to be made with the fiscal court; presumably in the county clerk's case, the excess fees due the fiscal court would require an audit review of state transactions. Since the Transportation Cabinet has fallen behind in audit of the clerks' offices, no election involving clerks has occurred. That situation will change this year, as all 120 county clerks stand for re-election in 1985.

The Kentucky Constitution also makes reference to a quietus. Section 45 reads as follows:

> No person who may have been a collector of taxes or public moneys for the Commonwealth, or for any county, city, town or district, or the assistant or deputy of such collector shall be eligible to the General Assembly, unless he shall have obtained a quietus six months before the election for the amount of such collection, and for all public moneys for which he may have been responsible.

A strict adherence to the Constitutional provision would prohibit the sheriff or county clerk from seeking state legislative office unless a quietus were produced. The lack of audits and the intention of the Transportation Cabinet not to grant a quietus from 1979 to 1983 could cause a court challenge of the candidacy of any county clerk who might seek election to the General Assembly.

Clearly, the Constitution places a burden on the agencies of the Commonwealth to implement a system of final settlement for agents involved in the collection of taxes. Since 1979, the Transportation Cabinet has ignored that Constitutional mandate and since 1982 the Revenue Cabinet has also failed to provide clerks the required quietus for their collection of motor vehicle ad valorem taxes.

Case Law Versus Quietus

While the quietus indicates a settlement of accounts, it should not, according to judicial ruling, be regarded as a guarantee against future audit. In the case of *Mason et al. versus Cook et al.* a rehearing was denied on March 16, 1920, with the court finding that:

> The granting of a quietus by the fiscal court to a sheriff or collector of public dues has never been held to estop the county or any taxing district from opening the settlement upon the approval of which a quietus is granted upon the grounds of fraud or mistake in the settlement, and the recovery from the sheriff and his sureties of the sums due the county or taxing district, and which have not been accounted for in the settlement by the fraud of the officer or by mutual mistake of the officer and commissioner with whom the settlement was made.[21]

Later in the same case, the court determined that the quietus was intended as an administrative procedure allowing taxing districts to protect themselves against embezzlement. The quietus was not designed to dismiss the demands on its recipient.

The Kentucky Court of Appeals on October 28, 1924, upheld the 1920 decision on the effect on a quietus in *Gay et al. versus Jackson County Board of Education.*[22] The court reaffirmed in this decision that quietus for public officials will not constitute estoppel against debt.

Conclusions

These court decisions have said that a quietus in itself will not exonerate any public officer from debt owed to taxing districts. The quietus is not necessarily a final settlement and is subject to challenge.

Based on these findings, passage of House Bill 801 or similar legislation would not accomplish the purpose of settlement with the state. The issuance of a quietus is merely an administrative procedure offering little more than cursory approval of an official's accounting practices. A quietus is simply a best guess of the financial condition of the office at the end of a fiscal year. A quietus only serves to protect the candidacy of a local tax agent who wishes to seek office in the General Assembly.

The fact that a quietus does not offer exoneration means that the state must not shirk its Constitutional responsibility to settle with the tax agent. In fact, the lack of settlement could jeopardize that agent's ability to run for the General Assembly in the future. Therefore, the taxing districts should make every effort to provide documentation of a final settlement. The quietus alone could be provided by the district without fear that mistake or fraud of the tax agent would mean lost revenue.

The constitutional and statutory authority for a quietus remains. Thus, the legislation offered by 1984 House Bill 801 does not serve any real purpose; if passed, it would not meet the needs of the county clerks for a true settlement.

The best protection to offer the state and the county clerks is the timely completion of audits. The audit should be done independent of the affected agencies, to protect all parties. Once an audit is completed, any party aggrieved by the findings should have the right to court action for potential recovery of the disputed amounts.

CHAPTER VIII

FINDINGS AND RECOMMENDATIONS

FINDING #1

The County clerks could be subjected to a stream of audits if each state and local agency which dealt with the clerk's office chose to perform individual audits.

Chapter II focused on the numerous duties which befall a county clerk. Although those duties were not individually discussed, it was noted that many required collection of fees and taxes. The county clerk is responsible to the Transportation Cabinet, the Revenue Cabinet, the Fish and Wildlife Commission, and county fiscal court. If each agency performed its own audit, the clerk might be so involved in explanations of bookkeeping practices as to neglect the services he was elected to provide for his constituents.

Chapters III and IV pointed to severe problems with the inventory practices of the Transportation Cabinet. Although current cabinet officials have cited efforts to correct and improve the inventory procedures, the clerk is afforded little opportunity to review those changes. Therefore, it seems equitable to have an independent agent perform the audits on the county clerks' collection of fees and taxes.

RECOMMENDATION #1

The State Auditor's Office should be given the statutory authority and necessary funding to perform the final audits on county clerks' offices on a yearly basis.

The State Auditor has statutory responsibility to audit funds contained in each county budget and books and accounts of the county clerks, under KRS 43.070. The county clerk may elect to have a private audit by notifying the State Auditor that a certified public accountant has been retained to perform the audit.

KRS 64.810 establishes guidelines which permit the county clerk to utilize a certified public accountant in the event the auditor's office declines to perform an audit. Private audits are required to be completed by August 1 following the calendar year being audited.

In addition, KRS 64.540 authorizes the fiscal court of a county to have an annual audit made of any county official who is compensated by fees, except those fees officers in counties with a population of 75,000 or more. Many of these audits are fees audits and do not go into the depth needed for a final settlement. This depth could be provided by statutory authority.

The current audit provisions do not relieve a clerk from liability in cases of audits performed by other agencies. In order to give a single audit some finality, it is further recommended that the State Auditor's Office's statutory authority be amended and ex-

panded to provide a comprehensive audit of the county clerks and to specify that the audit be recognized as the final determination of liability. An agency aggrieved by the audit could be given a period of one year to file legal action. This recommendation should not be construed as a limitation of an action against a clerk guilty of criminal activity.

A final audit performed by the State Auditor's Office would provide two important safeguards. First, final audits would have to be performed with knowledge of the state agency method of inventory. If the state agency procedures should become disjointed, as was the case with the motor vehicle licensing inventory, the state auditor, as an independent arm of state government, could seek corrections. Second, the county clerk would be spared a constant burden of potential audits by those agencies he deals with directly.

If this recommendation is acted upon, the burden of completing the yearly audits neglected by the Transportation Cabinet should not be placed on the State Auditor's Office. The problem could be corrected by accepting the independent audits the county clerks are required to obtain or to file motions against those audits which the Cabinet believes to be in error. The audits performed under KRS Chapter 43 and 64 may not provide an adequate illustration of clerks' activities and could therefore cost the Transportation and Revenue Cabinets a loss in revenue. However, the potential for loss which Secretary Poore cites as a problem stems from the relaxation of control standards in the Transportation Cabinet. The county clerks should not be held responsible for a state policy decision which failed to place proper safeguards on the inventory of fee items issued by the clerk as an agent of the state, especially when audits exist within a clerk's office for the time period the Cabinet failed to audit.

FINDING #2

Its recent past clearly shows that the Transportation Cabinet has failed to deal satisfactorily with county clerk audits and, by its own admission, failed to provide a satisfactory inventory system.

m This conclusion is manifested in the review of the in-house memorandum within the Department of Vehicle Regulation. Although the Department has made efforts to improve the inventory control system in recent months, there is always the chance that future office holders could change policy. This prospect is additional reason that the audit responsibility for county clerks should be given to an agency independent of the Department, preferably the State Auditor's Office. The independent audit function will serve not only to audit the clerks in a reliable manner, but to review any policy change which might damage the credibility of the Department of Vehicle Regulation's inventory procedures.

The weakest aspect of this approach is that it relies on inter-agency cooperation. Agencies in state government protect their own interests, often to the disregard of the overall interest of the Commonwealth. To enhance the transfer of the audit function to the State Auditor's Office, a second recommendation is offered.

RECOMMENDATION #2

A funding source should be made available to the State Auditor's Office which would allow for a smooth implementation of an audit function. The funding for administrative costs should come from those taxes the clerk collects for state use. Such taxes include the motor vehicle usage tax, motor vehicle registration fees, and the property tax on motor vehicles.

A Transportation Cabinet in-house memorandum cautioned that full-scale audit teams could cost $500,000 annually. This expense sounds high, but an examination of total taxes collected by the clerk, plus the previously uncovered liabilities, should negate any qualms regarding expenditure of state funds for such a purpose.

The county clerks, acting as agents for the Commonwealth, collect $125,000,000 annually in motor vehicle usage tax, and $34,000,000 annually in automobile and truck license fees. Based on a net assessment value of motor vehicles of $9,797,538,900 for property taxes and a rate of $.45 per hundred dollar valuation, the clerks collects $44,000,000. The combined state tax receipts for these three items make the clerks responsible for collecting $204,000,000. Obtaining the $500,000 the Transportation Cabinet estimated might be necessary would mean taking .00245% of the total of these three receipts for audit purposes.

The alternative to the transfer of these funds to the state auditor is to allow $204,000,000 to go unaudited. The result of that type of practice has yielded liabilities of over $1,800,000 in the cases of the deaths of two county clerks.

FINDING #3

The quietus legislation provided by 1984 House Bill 801 is not necessary. It would provide the clerk no added protection against liability for mistake or fraud.

The key issue is not the quietus. The issue at hand is a timely settlement of the clerk's account. The issue is best resolved through audits and not through other administrative procedures which serve only to relieve responsibility without proper determination of liability.

Chapter IV reviewed the case law regarding the effect of a quietus on final settlement of debt. The existence of a quietus makes little difference to the court in cases of mistake or fraud. In addition, a quietus is already required in the cases of a county official responsible for tax collection, so some authority already exists for clerks receiving a quietus. The only purpose the quietus may serve is to stop a possible action to remove a county clerk or sheriff from the ballot in legislative elections.

RECOMMENDATION #3

Quietus legislation is not necessary nor warranted. Efforts toward final settlement of a clerk's account should focus on timely on-site audits and the opportunity for affected parties to issue timely challenges to the audit findings, if necessary.

This study has detailed shortcomings of the inventory and the audit systems that the Transportation Cabinet, the Revenue Cabinet, the State Auditor's Office and county clerks have lived with over the past three years. The recommendations regarding audit responsibility, financing and final settlement will be debated. The overriding fact is that the lack of audit and inventory controls has damaged the reputations of the county clerks, who face a test of public confidence to retain their position. Although the clerk is not a state employee, he is an agent of the Commonwealth. It is incumbent upon state government to uphold the integrity of the clerk's office, if for no other reason than for assurance that taxes are being equitably collected.

The recommendations proposed by this study appear to be the best alternative to ensure that tax equity exists with equal protection for the clerk and those who transact business with the clerk. The proposed system could be paid for through minimal administrative costs without risking loss of revenue to the Commonwealth or jeopardizing the clerk's integrity. If other alternatives are explored those two factors should receive major emphasis.

Footnotes

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4. Memorandum to Robert H. Allphin from Alex W. Rose, Reporting of Usage Tax by County Clerks, Kentucky Department of Revenue, October 23, 1980.

5. Memorandum, Allphin to Rose, October 23, 1980.

6. Memorandum, Allphin to Rose, October 23, 1980.

7. Memorandum to Robert L. Higgins from Lewis Dotson, Kentucky Transportation Cabinet, December 21, 1983.

8. Report of the Auditor of Public Accounts Audit Examination of the Floyd County Clerk, State Auditor of Public Accounts, July 25, 1983.

9. Division of Audit Review, Department of Vehicle Regulation, Kentucky Transportation Cabinet.

10. Letter to Bremer Ehrler from Robert L. Higgins, Kentucky Transportation Cabinet, May 14, 1984.

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14. Memorandum from L. A. Hagan to Timothy D. Helson, Internal Audit Report Analysis, Kentucky Transportation Cabinet, August 11, 1983.

15. Memorandum, Hagan to Helson, August 11, 1983.

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17. Memorandum from Floyd G. Poore to Larry Hayes, Issues Raised by the County Clerks Association, June 5, 1984.

18. Memorandum from AVIS Review Committee to John A. Stephenson, Recommendations for AVIS Modifications, June 6, 1984.

19. A Preliminary Review of the New Proposed Auditing/Inventory System, October 11, 1984.

20. Memorandum, Rose to Allphin, October 23, 1980.

21. *Mason v. Cook,* 218 South West 740.

22. *Gay v. Jackson County Board of Education,* 265 South West 772.