



COMMONWEALTH of VIRGINIA

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STATE INSPECTOR GENERAL

Office of the State Inspector General

1111 E. BROAD STREET, 2nd Floor
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November 29, 2012

The Honorable Robert F. McDonnell
Governor of Virginia
Patrick Henry Building, 3rd Floor
1111 East Broad Street
Richmond, Virginia 23219

The Honorable Walter A. Stosch
Senate Finance Committee, Chair
General Assembly Building
Richmond, VA 23219

The Honorable Lacey E. Putney
House Appropriations Committee, Chair
General Assembly Building
Richmond, VA 23219

Dear Governor McDonnell, Senator Stosch, and Delegate Putney:

Under §3-6.05(C) of the 2012 Special Session I Acts of the General Assembly, Chapter 3, hereafter referred to as the 2012 Appropriations Act, the Office of the State Inspector General (OSIG; the Office) is required to conduct an evaluation of court fines and fees currently collected by Virginia state and local governments and to provide an interim report to you on the status of the evaluation by December 1, 2012 (see Attachment A for the §3-6.05 language).

The evaluation is intended to:

- determine the type of court fines and fees currently collected by Virginia state and local governments;
- determine the effect of the implementation of the APA calculation required in §3-6.05, paragraphs A. and B. on such collections;
- determine the magnitude of the court fines and fees collected by each source;

- determine the distribution or uses of the court fines and fees by each type;
- determine the factors influencing the determination of the application of specific court fines and fees;
- determine the ability within the current system to substitute or switch one such court fine or fee for another;
- determine the impact of the flexibility within the current system in application of such court fines or fees on deposits to the Literary Fund over time; and
- recommend improvements to the present system to better account for the individual types of court fines and fees collected.

In mid-July, I was notified by the Department of Planning and Budget (DPB) of the language requiring the evaluation of court fines and fees (CF&F), and staff, including myself, immediately began meeting with authors of the language to gain an understanding of the project. In August, we initiated planning for the CF&F evaluation; on August 24th, the funds were officially transferred to OSIG to conduct the study; and on September 25th, we formally transferred audit staff to the OSIG from consolidated agencies as mandated by the OSIG's enabling legislation. To better understand the issues at hand, I met with Chief of Staff Martin Kent, Secretary of Finance Ric Brown, Senator Walter Stosch, Senator John Watkins, Delegate Steve Landes, Auditor of Public Accounts Walter Kucharski, and Comptroller David Von Moll.

As a matter of edification, all parties interviewed advised that there was an understanding that the OSIG was newly created, under establishment, and may not be able to conduct the evaluation immediately. Thus, the date of December 1, 2012 for an interim report was intended to be a progress report on OSIG activities related to the evaluation. It was further agreed in a recent meeting with Senator Stosch, that a progress report in letter form would be an acceptable means of communicating the status of this evaluation.

The OSIG has made significant progress in conducting this evaluation, including visiting and performing testing at 21 General District Courts. Please refer to Attachment B for a listing of some of the activities that have, thus far, been conducted by OSIG staff.

The Appropriations Act transferred \$200,000 to the OSIG for the conduct of this evaluation. As of November 10th, the OSIG has expended approximately \$10,000 on the evaluation (this primarily represents OSIG travel costs, as OSIG salaries are not being charged against the \$200,000). The OSIG expects to fully utilize remaining funds on consultant fees necessary to finish the evaluation.

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Our tentative completion date is March 31, 2013. If there are any issues with this completion date, I will promptly communicate this to you and provide another progress report with a precise completion date.

On behalf of the Office of the State Inspector General, I would like to express our appreciation for the assistance provided by the Supreme Court of Virginia, the Auditor of Public Accounts, the Department of Accounts, the Department of the Treasury, the State Compensation Board, and the Department of Education for the invaluable assistance provided in this endeavor.

It is my hope that this status report provides the information you require. If you have any questions, please contact me or, as always, I would be happy to meet in person to discuss the CF&F evaluation or any other OSIG responsibility.

Respectfully,



Michael F. A. Morehart

Attachments

CC: Martin Kent, Chief of Staff

Attachment A

§3-6.05 DEPOSIT OF FINES AND FEES

A. The Auditor of Public Accounts shall annually calculate the amount of total fines and fees collected by the District Courts. The Auditor of Public Accounts will determine those localities in which total local fines and fee collections exceed 50 percent of the total collections. Using the Auditor of Public Accounts' calculation for fiscal year 2011, the State Comptroller shall deduct half of the amount in excess of 50 percent from any current payment of local fines and fees before remitting to the localities their remaining collections. When the State Comptroller has recovered in total, the half of the amount exceeding 50 percent, he shall pay all local collections monthly directly to the locality's treasury. The State Comptroller shall deposit the withheld funds in the Literary Fund, as they become available.

B. The Auditor of Public Accounts shall provide the State Comptroller the annual calculation by May 1 of each year for future withholdings. The State Comptroller will act as a fiscal agent, holding the amounts of local fine and fee collections in an agency fund.

C.1. The Office of the State Inspector General shall contract for an independent evaluation of the type of court fines and fees currently collected by Virginia state and local governments and the effect of the implementation of the provisions of paragraphs A and B of this section on such collections. This evaluation shall also determine among other things: 1) the magnitude of the court fines and fees collected by each source; 2) the distribution or uses of such fines and fees by each type; 3) factors influencing the determination of the application of specific court fines and fees and the ability within the current system to substitute or switch one such court fine or fee for another; 4) the impact of the flexibility in application of such court fines or fees, as determined previously in number 3, on deposits to the Literacy Fund over time; and 5) recommendations for improving the present system to better account for the individual types of court fines and fees collected and to align such collections with the assigned or statutory responsibilities of Virginia state and local governments, taking into account the constitutional requirements governing the deposit of court fines into the Literary Fund for public school purposes.

2. All agencies within the Legislative, Judicial, and Executive Departments, as well as local government offices, shall assist the Office of the State Inspector General and its contractor in providing information and data necessary to complete this evaluation. The Office of the Inspector General shall provide an interim report on the findings of this evaluation to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees by December 1, 2012. There is hereby transferred from the general fund an amount not to exceed \$200,000 in the first year to a special fund to be established in the Office of the State Inspector General to conduct this independent evaluation.

Attachment B

Actions Taken or Underway by OSIG Staff:

In order to gain an understanding of court fines and fees, OSIG staff has:

1. Conducted Interviews with:
 - a. Senate Finance staff
 - b. Supreme Court of Virginia staff
 - c. The Auditor of Public Accounts (APA) and staff
 - d. The State Comptroller and staff
 - e. General District (GD) Court clerks, sheriffs, and associated local treasurers and budgeting or finance officials

2. Obtained information from the:
 - a. APA Report – Local Ordinances and the Funding of Courts, issued September 2011
 - b. APA Report – Court Operations for the year ended June 30, 2011
 - c. JLARC Report – Operational and Capital Funding for Districts and Circuit Courts, issued December 2009
 - d. APA work papers and the calculation required by §3-6.05 - May 2012
 - e. Supreme Court (SC) of Virginia Financial Management/Case Management Systems (FMS/CMS) reports/data
 - f. Commonwealth Accounting and Reporting System (CARS) reports
 - g. Media coverage regarding supplemental local traffic enforcement/additional revenue
 - h. Virginia State Police process and statistics regarding changing fines/fees revenue on individual court cases from state to local
 - i. Code of Virginia information regarding the allowance of similar ordinances by localities; information regarding assessment and distribution of court fines and fees
 - j. Historical information related to the Literary Fund
 - k. State Compensation Board payments to localities

3. Performed the following planning and analytical steps:
 - a. Re-calculated APA's calculation for FY 2011, as mandated in the 2012 Appropriations Act
 - b. Calculated the results of the calculation at 30%, 40%, and 50%, in order to illustrate the resulting additional revenues that would flow to the Literary Fund
 - c. Compiled state/local collection amounts, by locality [and court], for FY10, FY11, and FY12
 - d. Reconciled the Supreme Court of Virginia data to CARS data
 - e. Developed an understanding of the collection and disbursement process for court fines and fees, locally and at the Department of Accounts
 - f. Developed a detailed work program to test courts
 - g. Devised a sampling plan of General District Courts which resulted in visits to 21 courts across all regions of the Commonwealth

- h. Notified the General District Court Clerks of the evaluation and the OSIG visits with a joint notification letter from the Clerk of the Supreme Court and myself
 - i. Collected financial data related to the Literary Fund and consolidated the information into tables that cover ten years of data
- 4. OSIG staff traveled to 21 General District courts (out of 125) and performed tests at each court such as:
 - a. Sampled at least 25 cases from the SC's Case Management System (CMS) and for those resulting in collections, reviewed the supporting documentation to determine that fines were properly classified as state law or local ordinance violations based on the selections by the officers (state or local) who issued the summonses and the ordinance descriptions cited
 - b. Determined if fines and fees assessed agreed with the amounts recorded in the Financial Management System (FMS)
 - c. Reviewed a sample of journal vouchers to determine if any adjustments were inappropriately made to cases resulting in state fines being recorded as local fines
 - d. Determined that the proper assessment of fines and fees was made, based on the information on the summonses
- 5. OSIG staff have:
 - a. Designed a survey questionnaire to send to the remaining courts that are not visited directly
 - b. Designed a survey questionnaire to send to sheriff's offices
 - c. Gathered information and performed analyses pertaining to the specific questions in the Appropriations Act
 - d. Determined that 8 localities, of the 21 courts visited, had added supplemental traffic enforcement that caused local revenue to increase
 - e. Developed a "working" list of issues identified to date
- 6. OSIG is in the process of hiring consultants to assist with the conduct of the evaluation:
 - a. On October 19, 2012, while developing our Agency budget, DPB alerted OSIG staff that the Appropriations Act language required that a consultant be engaged to perform some portion of the evaluation.
 - b. Because of the time that would have been required to create a solicitation and contract, OSIG leveraged the Virginia Department of Transportation's (VDOT's) Audit Services Contract to seek a consultant to assist with additional field work and report development. As of November 19, 2012, verbal agreements have been established with two firms, one of which will perform additional fieldwork while the other will provide assistance with the final report on this project.
 - c. Once a selection is made, I will have DGS review the task order and it will be approved. I am hopeful to have a contractor on board in December but no later than January 1, 2013.
- 7. The consultants will conduct additional testing, as needed, and will also perform specific testing in the following areas:
 - a. Additional court visits, if needed

- b. A detailed review of the 8 localities employing supplemental traffic enforcement, including a review of the state funding they receive from the State Compensation Board, detailed interviews to determine any levels of coordination between the VSP troopers and the local law enforcement officers who are conducting supplemental traffic enforcement efforts, and a review of expenditures incurred by the sheriffs' offices
 - c. A review of any processes or models that VSP uses to determine the level of traffic enforcement in an area and specifically focus that review on the 8 localities with supplemental traffic enforcement. This review will include interviews with VSP supervisors at their division and local area headquarters levels as well as with executive or policy setting staff at State Police Headquarters (SPHQ), if considered necessary.
8. The consultants, in conjunction with OSIG staff, will develop a report to summarize the work performed, as well as to document findings recorded and recommendations made.