

DISTRICT COURT 31-1-06

LEHIGH COUNTY

EXAMINATION REPORT

FOR THE PERIOD

JANUARY 1, 2004 TO DECEMBER 31, 2007

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Independent Auditor's Report

Mr. Stephen H. Stetler
Acting Secretary
Pennsylvania Department of Revenue
Harrisburg, PA 17128

We have examined the accompanying statement of receipts and disbursements (Statement) of District Court 31-1-06, Lehigh County, Pennsylvania (District Court), for the period January 1, 2004 to December 31, 2007, pursuant to the requirements of Section 401(c) of *The Fiscal Code*, 72 P.S. § 401(c). This Statement is the responsibility of the District Court's management. Our responsibility is to express an opinion on this Statement based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in *Government Auditing Standards* issued by the Comptroller General of the United States. An examination includes examining, on a test basis, evidence supporting the Statement and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

We are mandated by Section 401(c) of *The Fiscal Code* to audit the accounts of each district court to determine whether all moneys collected on behalf of the Commonwealth have been correctly assessed, reported and promptly remitted. *Government Auditing Standards* issued by the Comptroller General of the United States include attestation engagements as a separate type of audit. An attestation engagement performed pursuant to *Government Auditing Standards* involves additional standards that exceed the standards provided by the American Institute of Certified Public Accountants. Accordingly, this attestation engagement complies with both *Government Auditing Standards* and Section 401(c) of *The Fiscal Code*.

Independent Auditor's Report (Continued)

In our opinion, the Statement referred to above presents, in all material respects, the operations of the District Court as it pertains to receipts made on behalf of the Commonwealth for the period ended December 31, 2007, in conformity with the criteria set forth in Note 1.

In accordance with *Government Auditing Standards*, we are required to report findings of significant deficiencies in internal control, violations of provisions of contracts or grant agreements, and abuse that are material to the Statement and any fraud and illegal acts that are more than inconsequential that come to our attention during our examination. We are also required to obtain the views of management on those matters. We performed our examination to express an opinion on whether the Statement is presented in accordance with the criteria described above and not for the purpose of expressing an opinion on the internal control over reporting on the Statement or on compliance and other matters; accordingly, we express no such opinions.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the District Court's ability to initiate, authorize, record, process, or report data reliably in accordance with the applicable criteria such that there is more than a remote likelihood that a misstatement of the District Court's Statement that is more than inconsequential will not be prevented or detected by the District Court's internal control. We consider the deficiency described in the finding below to be a significant deficiency in internal control over reporting on the Statement:

- Inadequate Arrest Warrant And DL-38 Procedures.

Independent Auditor's Report (Continued)

A material weakness is a significant deficiency or combination of significant deficiencies that results in more than a remote likelihood that a material misstatement of the Statement will not be prevented or detected by the District Court's internal control. Our consideration of the internal control over reporting on the Statement would not necessarily disclose all matters in the internal control that might be significant deficiencies and, accordingly, would not necessarily disclose all significant deficiencies that are also considered to be material weaknesses. However, we believe that the significant deficiency described above is not a material weakness.

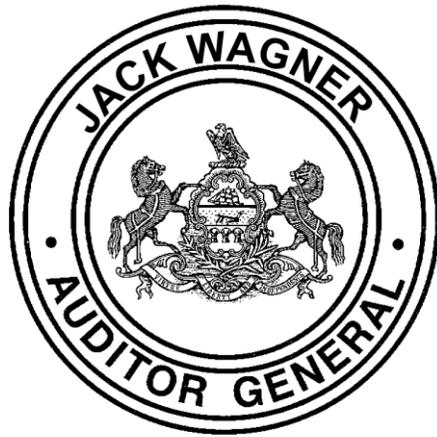
The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

We are concerned in light of the District Court's failure to correct a previously reported finding regarding inadequate arrest warrant and DL-38 procedures. The District Court should strive to implement the recommendations and corrective action noted in this examination report. These significant deficiencies increase the risk for funds to be lost, stolen, or misappropriated and in uncollected fines and unpunished offenders.

This report is intended solely for the information and use of the Pennsylvania Department of Revenue, the Administrative Office of Pennsylvania Courts, and the District Court and is not intended to be and should not be used by anyone other than these specified parties.

January 20, 2009

JACK WAGNER
Auditor General



DISTRICT COURT 31-1-06
 LEHIGH COUNTY
 STATEMENT OF RECEIPTS AND DISBURSEMENTS
 FOR THE PERIOD
 JANUARY 1, 2004 TO DECEMBER 31, 2007

Receipts:

Department of Transportation		
Title 75 Fines	\$ 249,169	
Motor Carrier Road Tax Fines	13	
Overweight Fines	338	
Littering Law Fines	838	
Child Restraint Fines	1,904	
Department of Revenue Court Costs	162,655	
Crime Victims' Compensation Bureau Costs	16,675	
Crime Commission Costs/Victim Witness Services Costs	12,271	
Domestic Violence Costs	4,439	
Fish and Boat Commission Fines	931	
Emergency Medical Service Fines	69,426	
CAT/MCARE Fund Surcharges	219,122	
Judicial Computer System Fees	84,358	
Access to Justice Fees	18,236	
Constable Service Surcharges	16,439	
Firearm Education and Training Costs	15	
	<hr/>	
Total receipts (Note 2)	\$ 856,829	
Disbursements to Commonwealth (Note 3)		<hr/> <u>(856,829)</u>
Balance due Commonwealth (District Court) per settled reports (Note 4)		-
Examination adjustments		<hr/> -
Adjusted balance due Commonwealth (District Court) for the period January 1, 2004 to December 31, 2007		<hr/> <u>\$ -</u>

Notes to the Statement of Receipts and Disbursements are an integral part of this report.

DISTRICT COURT 31-1-06
LEHIGH COUNTY
NOTES TO THE STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD
JANUARY 1, 2004 TO DECEMBER 31, 2007

1. Criteria

The Statement of Receipts and Disbursements provides a summary of receipts and disbursements by category. The categories and the amounts of fines, costs, fees, and surcharges assessed are based on Pennsylvania laws and regulations.

The Statement was prepared in accordance with reporting requirements prescribed by the Pennsylvania Department of Revenue. Under this method, only the Commonwealth portion of cash receipts and disbursements are presented, revenues are recognized when received, and expenditures are recognized when paid.

2. Receipts

Receipts are comprised of fines, costs, fees, and surcharges collected on behalf of the Commonwealth. These fines, costs, fees, and surcharges represent collections made on traffic, non-traffic, civil, and criminal cases filed with the District Court.

3. Disbursements

Total disbursements are comprised as follows:

District Court checks issued to:

Department of Revenue	<u>\$ 856,829</u>
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4. Balance Due Commonwealth (District Court) For The Period January 1, 2004 To December 31, 2007

This balance reflects the summary of monthly transmittal reports as settled by the Department of Revenue.

5. Magisterial District Judges Serving During Examination Period

Thomas P. Murphy served at District Court 31-1-06 for the period January 1, 2004 to January 1, 2006.

Wayne Maura served at District Court 31-1-06 for the period January 2, 2006 to December 31, 2007.

DISTRICT COURT 31-1-06
LEHIGH COUNTY
FINDING AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2004 TO DECEMBER 31, 2007

Finding - Inadequate Arrest Warrant And DL-38 Procedures

Warrants and Requests For Suspension Of Operating Privileges (DL-38s) are used to enforce the collection of monies on traffic and non-traffic cases in which defendants failed to make payments when required. A Warrant of Arrest (AOPC 417) is used to authorize an official to arrest a defendant, to collect fines and costs from the defendant after a disposition, or to collect collateral for a trial. If the defendant does not respond within ten days to a citation or summons, a Warrant of Arrest may be issued. A Request for Suspension of Driving Privileges for Failure to Respond to a Citation or Summons or Pay Fines and Costs Imposed (AOPC 638A) is used to notify the defendant in writing that his/her license will be suspended if he/she fails to respond to the traffic citation or summons. A DL-38 cannot be issued for a parking violation.

During our testing of warrant procedures, we noted that warrant procedures established by the *Magisterial District Judge Automated Office Clerical Procedures Manual* (Manual) were not always followed. The Magisterial District Judge did not consistently issue warrants when required. We sampled 35 instances in which a warrant was required to be issued. Our testing disclosed that 12 were not issued timely. The time of issuance ranged from 68 days to 908 days.

In addition, of 35 warrants required to be returned or recalled, 9 were not returned or recalled, and 11 were not returned timely. The time of issuance to the time of return ranged from 196 days to 647 days.

Furthermore, we sampled 10 instances in which a DL-38 was required to be issued. Our testing disclosed that 4 were not issued timely. The time of issuance ranged from 75 days to 910 days.

The Manual establishes the uniform written internal control policies and procedures for all district courts.

Warrant Issuance Procedures: The Manual states that on October 1, 1998, new warrant procedures took effect for summary cases. Amendments were made to Pa.R.Crim.P. Rules 430, 431, 454, 455, 456, 460, 461, and 462. To comply with the new changes, the Notice of Impending Warrant (AOPC A418) was created with the purpose of informing the defendant that failure to pay the amount due or to appear for a Payment Determination Hearing will result in the issuance of an arrest warrant. The defendant is also informed that his/her response must be made within ten days of the date of the notice.

DISTRICT COURT 31-1-06
LEHIGH COUNTY
FINDING AND RECOMMENDATIONS
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Finding - Inadequate Arrest Warrant And DL-38 Procedures (Continued)

According to Pa.R.Crim.P. Rule 430, a Notice of Impending Warrant may be issued in a post-disposition summary case for any of the following reasons:

- A guilty disposition is recorded and no payment is made or a time payment schedule is not created.
- A guilty disposition is recorded and a previously deposited collateral payment, when applied, does not pay the case balance in full.
- A guilty disposition is recorded and the defendant defaults on a time payment schedule.

According to Pa.R.Crim.P. 430, a warrant SHALL be issued in a summary case for any of the following reasons (a Notice of Impending Warrant is not necessary for the following):

- The defendant has failed to respond to a citation or summons that was served either personally or by certified mail, return receipt requested.
- The citation or summons is returned undeliverable.
- The Magisterial District Judge has reasonable grounds to believe that the defendant will not obey a summons.

Warrant Return Procedures: The Manual states that the Administrative Office of Pennsylvania Courts (AOPC) recommends that those in possession of arrest warrants should be notified to return warrants that have not been served. For summary traffic and non-traffic cases, outstanding warrants should be returned to the Magisterial District Judge's office within 60 days of issuance. Returned warrants can either be recorded in the Magisterial District Judge System (MDJS) as unserved, if the defendant is unable to be located; or they can be recalled for reissue, if the server has not exhausted all means of finding the defendant.

DL-38 Procedures: The Manual states that once a citation is given to the defendant or a summons is issued, the defendant has ten days to respond. If on the eleventh day, the defendant has not responded, 75 Pa.C.S.A. §1533 requires that the defendant be notified that he/she has fifteen days from the date of notice to respond to the citation/summons before his/her license is suspended. In accordance with Section 1533 of the Pennsylvania Vehicle Code, the defendant has 15 days to respond to the defendant's copy of the DL-38. If the defendant does not respond by the fifteenth day, the Magisterial District Judge's office shall notify the Pennsylvania Department of Transportation by issuing the appropriate License Suspension Request (AOPC 638B,D,E).

DISTRICT COURT 31-1-06
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FINDING AND RECOMMENDATIONS
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Finding - Inadequate Arrest Warrant And DL-38 Procedures (Continued)

In addition, 75 Pa.C.S.A. §1533 also requires a post-disposition DL-38 (AOPC 638B/E) be issued if the defendant neglects to pay fines and costs imposed at the time of disposition, or fails to make a scheduled time payment.

The failure to follow warrant and DL-38 procedures when required increases the risk for funds to be lost, stolen, or misappropriated, and in uncollected fines and unpunished offenders.

Adherence to the uniform internal control policies and procedures, as set forth in the Manual, would have ensured that there were adequate internal controls over warrants and DL-38s.

This finding was cited in our last two audit periods, the most recent ending December 31, 2003.

Recommendations

We again recommend that the district court review the tickler reports for warrants and DL-38s daily and take appropriate action as required by the Manual. We again recommend that the court review warrant control reports and notify police or other officials to return warrants that are unserved for 60 days for summary traffic and non-traffic cases as required by the Manual.

Management's Response

The Magisterial District Judge responded as follows:

For the record, MDJ Maura took office January 2006. All recommendations are noted, will be reviewed and greater effort toward compliance will be made.

Auditor's Conclusion

We appreciate the Magisterial District Judge's effort to correct this condition. During our next examination we will determine if the office complied with our recommendations.

DISTRICT COURT 31-1-06
LEHIGH COUNTY
OBSERVATION
FOR THE PERIOD
JANUARY 1, 2004 TO DECEMBER 31, 2007

Observation - Improper Assessment Of Costs

Our examination of Lehigh County District Courts revealed that the courts were assessing a \$10 fee to cover the additional administrative costs related to establishing installment payment plans in summary conviction cases, pursuant to the provisions of 42 Pa.C.S.A. § 1725.1(c)(5), relating to unclassified costs. Lehigh County District Courts were authorized to assess this cost on all summary cases when the defendant in the summary case requests and is permitted to make installment payments as provided in Pa.R.Crim.P. 454 (F) (1), Trial in Summary Cases.

The Lehigh County Courts interpret such language for the purpose of their Administrative Orders, to mean they are authorized to charge a \$10 fee for defendants paying costs and fines through installment payment plans. However, the subchapter in question, 42 Pa.C.S.A. § 1725.1(c)(5) titled “Specific Powers of the Governing Authority of the System,” provides for fees to be charged by the courts for various actions relating to issuing documents, such as court orders and warrants, in civil cases, custody cases, and criminal cases, not for establishing a payment schedule for defendants.

Recommendations

We recommend that district court discontinue assessing the above-cited fee. We further recommend that Lehigh County Courts assess fees and costs as intended by the appropriate state statutes.

Management’s Response

The President Judge responded as follows:

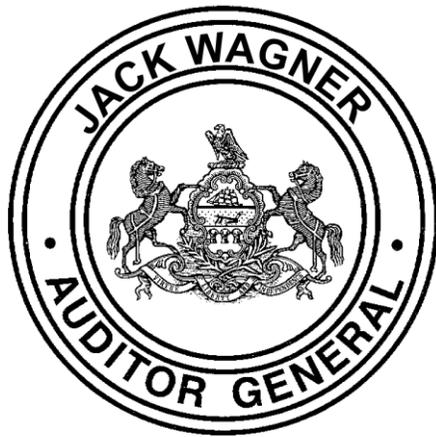
This order was adopted pursuant to the authority set forth in 42 Pa.C.S. Section 1725.1 (c) (5), and therefore was a proper exercise of the authority vested in the courts by the statute since it, in reality is a fee for the “issuance” of the payment plan or court order adopting the payment plan in the case. This is obviously so because that is the authority cited for the \$10.00 fee. Admittedly, there is language about recovering administrative costs, but those costs, over and above the costs of setting up the payment plan, far exceed the \$10.00 fee set for the initial plan. If the auditor is not willing to withdraw this “observation,” the current President Judge has indicated he will clarify the Administrative Order by amendment to reflect this intent.

DISTRICT COURT 31-1-06
LEHIGH COUNTY
OBSERVATION
FOR THE PERIOD
JANUARY 1, 2004 TO DECEMBER 31, 2007

Observation - Improper Assessment Of Costs (Continued)

Auditor's Conclusion

As previously stated, 42 Pa.C.S.A. § 1725.1(c)(5) allows for fees to be assessed against parties serving documents, such as warrants and protection from abuse orders. Setting up an installment payment plan for a defendant to pay costs and fines does not include the “issuance” of any documents, but rather is simply an administrative program to keep track of how much a defendant has paid. Lehigh County amending its Administrative Order to include the word “issuance” does not correct the original problem, which is Lehigh County improperly assessing additional fees against defendants.



DISTRICT COURT 31-1-06
LEHIGH COUNTY
REPORT DISTRIBUTION
FOR THE PERIOD
JANUARY 1, 2004 TO DECEMBER 31, 2007

This report was initially distributed to:

Mr. Stephen H. Stetler
Acting Secretary
Pennsylvania Department of Revenue

The Honorable Zygmunt Pines
Court Administrator of Pennsylvania
Administrative Office of Pennsylvania Courts

District Court 31-1-06
Lehigh County
Canal Plaza
565 West Lehigh Street
Bethlehem, PA 18018

The Honorable Wayne Maura	Magisterial District Judge
Ms. Susan T. Schellenberg	District Court Administrator
The Honorable Thomas Slonaker	Controller
Dr. Percy Dougherty	Chairman of the Board of Commissioners

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