

The seal of the State Auditor of Missouri is circular. It features a central shield with a balance scale and a plow. Above the shield is an eagle with spread wings. The text "SEAL OF THE STATE AUDITOR" is at the top, "WE STAND DIVIDED" is in the middle, and "1820 MISSOURI 1892" is at the bottom.

Nicole Galloway, CPA

Missouri State Auditor

Clay County

County Collector

Report No. 2020-114

December 2020

auditor.mo.gov



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Missouri State Auditor

CITIZENS SUMMARY

Findings in the audit of Clay County - County Collector

Tax Sale Services	The County Collector's office did not properly procure tax sale services, always ensure amounts paid for those services were in accordance with the contract rates, or maintain adequate supporting documentation for disbursements to the vendor.
Tax Billing and Collection Services	Written contracts could not be located for one city and one village for tax billing and collection services.
Tax Maintenance Fund Disbursements	The County Collector authorized disbursements from the Tax Maintenance Fund to the National Tax Lien Association for event sponsorships, general advertisements in event programs, and donations totaling \$5,000 that do not appear to be necessary and beneficial to the administration and operation of the County Collector's office.

In the areas audited, the overall performance of this entity was **Good**.*

*The rating(s) cover only audited areas and do not reflect an opinion on the overall operation of the entity. Within that context, the rating scale indicates the following:

- Excellent:** The audit results indicate this entity is very well managed. The report contains no findings. In addition, if applicable, prior recommendations have been implemented.
- Good:** The audit results indicate this entity is well managed. The report contains few findings, and the entity has indicated most or all recommendations have already been, or will be, implemented. In addition, if applicable, many of the prior recommendations have been implemented.
- Fair:** The audit results indicate this entity needs to improve operations in several areas. The report contains several findings, or one or more findings that require management's immediate attention, and/or the entity has indicated several recommendations will not be implemented. In addition, if applicable, several prior recommendations have not been implemented.
- Poor:** The audit results indicate this entity needs to significantly improve operations. The report contains numerous findings that require management's immediate attention, and/or the entity has indicated most recommendations will not be implemented. In addition, if applicable, most prior recommendations have not been implemented.

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NICOLE GALLOWAY, CPA

Missouri State Auditor

County Collector
Clay County, Missouri

The State Auditor was petitioned under Section 29.230, RSMo, to audit Clay County. We have audited certain operations of the Clay County Collector in fulfillment of our duties. The county engaged RSM US LLP to audit the county's financial statements for the year ended December 31, 2018. To minimize duplication of effort, we reviewed the firm's audit report for the year ended December 31, 2017, since the report for the year ended December 31, 2018, had not been completed. The scope of our audit included, but was not necessarily limited to, the year ended December 31, 2018. The objectives of our audit were to:

1. Evaluate the County Collector's internal controls over certain management and financial functions.
2. Evaluate the County Collector's compliance with certain legal provisions.
3. Evaluate the economy and efficiency of certain management practices and procedures, including certain financial transactions.

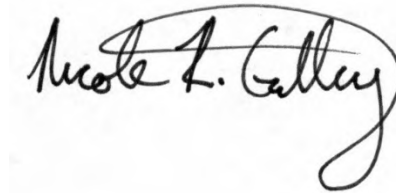
Our methodology included reviewing written policies and procedures, financial records, and other pertinent documents; interviewing various personnel of the county, as well as certain external parties; and testing selected transactions. We obtained an understanding of internal controls that are significant within the context of the audit objectives and assessed whether such controls have been properly designed and placed in operation. We also obtained an understanding of legal provisions that are significant within the context of the audit objectives, and we assessed the risk that illegal acts, including fraud, and violations of applicable contract or legal provisions could occur. Based on that risk assessment, we designed and performed procedures to provide reasonable assurance of detecting instances of noncompliance significant to those provisions.

We conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides such a basis.

The accompanying Organization and Statistical Information is presented for informational purposes. This information was obtained from the County Collector and was not subjected to the procedures applied in our audit of the County Collector.

For the areas audited, we identified (1) deficiencies in internal controls, (2) noncompliance with legal provisions, and (3) the need for improvement in management practices and procedures. The accompanying Management Advisory Report presents our findings arising from our audit of the Clay County Collector.

Additional audit reports of various elected officials and Clay County as a whole are still in process, and any additional findings and recommendations will be included in subsequent reports.

A handwritten signature in black ink, reading "Nicole R. Galloway". The signature is fluid and cursive, with a large loop at the end of the last name.

Nicole R. Galloway, CPA
State Auditor

The following auditors participated in the preparation of this report:

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Clay County

County Collector

Management Advisory Report - State Auditor's Finding

1. Tax Sale Services

The County Collector's office did not properly procure tax sale services, always ensure amounts paid for those services were in accordance with the contract rates, or maintain adequate supporting documentation for disbursements to the vendor.

The County Collector executed a contract in 2017 with a State of Louisiana vendor to provide tax sale services. The Collector authorized payments to the vendor totaling \$116,882 and \$83,895 during 2018 and 2019, respectively, from the General Fund, Tax Maintenance Fund, and Collector's Tax Sale account. The County Collector included the vendor's fees with the purchase price of the property and other fees at the County Collector's annual sale of properties with delinquent property taxes.

Vendor procurement

The County Collector did not solicit proposals for tax sale services as required by county code and state law. The County Collector indicated she discussed the services with several potential vendors and chose the vendor who offered the ability to incrementally include additional services for parcels. While the County Collector prepared a summary comparison of the prices and services from her discussion with 3 vendors, the County Collector did not advertise for bids or prepare a request for proposal. The County Collector also indicated that proposals were not needed because the contract terms were part of a cooperative agreement. However, the contract only contained a general certification from the vendor that the payment terms provided to Clay County were the same as those offered other government entities using competitively negotiated pricing and did not indicate the other government entities, and the contract did not reference a cooperative agreement.

Section 50.660, RSMo, requires contracts be let to the lowest and best bidder after due opportunity for bidding, including advertising, for bids, except that advertising is not required for expenditures less than \$6,000. Additionally, County Code Section 37.39 requires a formal request for proposal process for soliciting professional services, and Sections 37.36 and 37.37 outline required procedures and documentation for the use of cooperative agreements procured by other public entities and sole source purchases, respectively. Routine use of a competitive procurement process for major purchases ensures the county has made every effort to obtain the best and lowest price and all interested parties are given an equal opportunity to participate in county business. Documentation of the various proposals received, the selection process, and the criteria used should be retained to demonstrate compliance with applicable laws or regulations and support decisions made.

Invoices

The County Collector did not always ensure invoiced amounts were appropriate prior to payment. For example, a December 2017 invoice for \$33,000 indicated only that the costs were for "Administrative Tax Sale Costs." The County Collector generally uses tax sale fee records to ensure amounts invoiced are accurate, but did not maintain those records for this



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sale, and therefore, could not verify the invoiced amount. The invoice was paid January 2018 from the county General Fund. After we requested additional supporting documentation for this transaction, the County Collector contacted the vendor who determined the amount paid was a prepayment that had not been applied to billings for subsequent services as intended, and consequently a \$33,000 credit is now due the county.

The County Collector also did not always ensure invoiced rates agreed to contract terms. For example, an August 2018 invoice paid from the Tax Maintenance Fund (TMF) included charges for skip tracing¹ for 631 units at \$50 per unit (\$31,550) when the contract fee schedule priced skip tracing at \$40 per unit. An October 2019 invoice, also paid from the TMF, included charges for public records research on 519 properties at \$95 per property (\$49,305) when the contract fee schedule priced those services at \$75 per property. According to the County Collector, some of the vendor rates were modified to account for differences between the vendor's various services, the special needs of her office, and the unique requirements of Missouri law for tax sales; however, the contract was not amended to reflect these changes.

Section 432.070, RSMo, requires contracts for political subdivisions to be in writing, and County Code Section 37.78 requires quantities and price billed to be verified before invoices are authorized for payment. Without adequate detail supporting summarized invoice amounts, the County Collector cannot ensure services are provided in accordance with the contract terms and at the proper rates, and that the costs are properly reimbursed by tax sale purchasers. Also, to ensure compliance with contract terms, disbursements to the vendor should be made at the rates contained in the contract and any modifications to contract rates should be documented in a contract amendment.

Recommendation

The County Collector ensure professional services are procured in accordance with state law and county code. In addition, the County Collector should ensure adequate supporting documentation is maintained for all disbursements to ensure invoiced amounts are appropriate prior to payment and/or rates charged are in accordance with the tax sale services contract, and contracts should be amended when terms change.

Auditee's Response

The due diligence compliance provided by CivicSource is statutory in nature and is not a purchase or a traditional "professional service" subject to purchasing guidelines. Due diligence compliance cannot be arranged based on any factor other than the ability of the provider to strictly follow Chapter 140, RSMo, and ensure due process to Clay County taxpayers and investors. Furthermore, the County cannot enter into a traditional contract on behalf of

¹ Skip tracing is the process of locating a property owner's whereabouts to provide notice about the sale of his or her property.



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the Collector when seeking these services, as statutory compliance cannot be negotiated.

All payments to CivicSource were reimbursements for actual costs incurred in the process of complying with the pre- and post-sale due diligence requirements of Chapter 140, RSMo. A listing of the available services and applicable costs were provided to the Collector in writing every year, and all services were billed and paid according to that schedule. Any reference to alternate fee structures come from the contract CivicSource offered to Benton County, Louisiana. Although Clay County was given the same competitive tier of pricing as given to Benton County, Missouri law requires different services than Louisiana law, thus pricing, while similar in nature, is not identical in dollar amount.

The fees referenced by the auditor above all comported precisely with the written fee schedule, as adjusted each year according to need. All costs were originally attached to a tax bill before they were reimbursed to CivicSource, and every invoice was tied directly back to each individual charge before payment. CivicSource was not paid any money other than reimbursement for statutorily-required compliance.

Despite the fact that no traditional purchasing principles or laws apply to such an arrangement, the Collector did interview and compare multiple candidates with qualifications to complete the necessary statutory requirements on behalf of the Collector. Documentation of this research, together with a detailed analysis, has been provided to the auditor. The Collector also obtained a written guarantee from CivicSource that Clay County was receiving the same industry standard pricing and terms as all other public entities.

The payment of \$33,000 at the end of 2017 was supposed to be held in escrow in anticipation of amounts to be billed in connection with the 2018 sale. It appeared to the office of Collector that appropriate credit had been given for that escrowed amount, but our record keeping was in error. That deficiency has now been corrected with CivicSource. Proper credit has and will be given as additional due diligence is completed.

Despite the inapplicability of purchasing law, the office of Collector will provide all documentation of its arrangement with CivicSource to the county purchasing department or Commission for review.

Auditor's Comment

The County Collector's response states that purchasing guidelines do not apply because the services provided by the vendor are statutory (i.e., meet the statutory requirements for a Missouri tax sale). However, state law and county code do not provide exceptions for procurements related to statutorily-required operations, such as tax sales. Therefore, such services should be



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procured in accordance with state law and county code. Additionally, the County Collector's response states the vendor adjusted fees annually, and all services were paid in accordance with the adjusted fee schedule. However, as noted in the finding, the contract was not amended for the adjusted rates.

2. Tax Billing and Collection Services

Written contracts could not be located for one city and one village for tax billing and collection services. City and village officials also were unable to locate copies of the contracts. Collections for these two political subdivisions totaled approximately \$48,000 during the year ended February 28, 2019. Additionally, a contract for another city had not been updated to reflect a reduction in the payment terms made in 2012. The County Collector's office collected approximately \$420 million in property taxes and other monies during the year ended February 28, 2019, including about \$56 million for 21 cities and villages located within the county.

Section 50.332, RSMo, allows county officials, subject to the approval of the county commission, to perform tax collection services for cities they normally provide to the county. Section 432.070, RSMo, requires all such contracts to be in writing. Clear, detailed, and timely written contracts are necessary to ensure all parties are aware of the services to be performed and the compensation to be paid for the services.

Recommendation

The County Collector work with the County Commission to obtain current written contracts with the cities and villages for property tax collections.

Auditee's Response

Resolution 2012-188 of the Clay County Commission authorized the Collector to offer every city in Clay County a form contract, which form and content were attached to the resolution and approved. The written contracts on file in the Clerk's office pre-date this authorization by the Commission, and did not yet apply to every city in Clay County. After the date of that resolution, the Collector, working together with County Counsel, did offer the same terms and conditions as authorized by the Commission to every city in Clay County and has continuously performed such services with the approval of the Commission. All contracts perpetually renew at the request of both parties.

Despite the validity of the current contractual arrangements with every city, the office of Collector will seek to obtain new contracts with every city beginning in 2021.

3. Tax Maintenance Fund Disbursements

The County Collector authorized disbursements from the Tax Maintenance Fund (TMF) to the National Tax Lien Association (NTLA) for event sponsorships, general advertisements in event programs, and donations totaling \$5,000 that do not appear to be necessary and beneficial to the administration and operation of the County Collector's office. According to the County Collector, the disbursements supported the legislative lobbying efforts of the NTLA and helped attract potential investors to Clay County tax



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sales. Disbursements from the TMF totaled about \$703,000 and \$507,000 during 2018 and 2019, respectively.

Section 52.315, RSMo, indicates the TMF is to be used for costs related to training, information technology, equipment, and other essential administrative expenses necessary to carry out the duties and responsibilities of the office of the County Collector. Since the payments to the NTLA do not appear to fit into any of these categories, the disbursements may not be an appropriate use of TMF monies. Public funds should be spent only on items necessary and beneficial to the county. Citizens have placed a fiduciary trust in their public officials to spend county monies in a prudent and necessary manner.

Recommendation

The County Collector ensure all disbursements from the TMF are necessary and beneficial for the County Collector's office and are a prudent use of taxpayer funds.

Auditee's Response

The National Tax Lien Association provides many invaluable services to tax collectors throughout the United States. Specifically, it offers training in antitrust law, monitoring of legislative and judicial trends that might affect all tax sales, professional association for collectors to obtain additional perspective on particular issues in their jurisdictions, a certification program for tax lien professionals, and a standardized code of ethics to present to investors. These and so many other benefits provided to the office of Collector are and continue to be invaluable, and to fit well and fully into the statutory authority of the Collector to use the Tax Maintenance Fund for training and essential expenses. The Clay County tax sale is extraordinarily complex—more complex than the sale of any other statutory county in Missouri. The training, guidance, legislative and judicial awareness, and professional resources provided by this organization represent one of the best possible uses of the Tax Maintenance Fund. The homeowners and investors that participate in the Clay County tax sale have benefitted tremendously from the commitment to ethics, expertise, and education provided to the Office of Collector by the National Tax Lien Association.

The references to total expenditures from the Tax Maintenance Fund in 2017 and 2018 have nothing to do with the recommendation regarding the National Tax Lien Association. Payments to the National Tax Lien Association were only \$6,100 total for those two years. The rest of the payments from the Tax Maintenance Fund were for salaries, software maintenance, technology purchases, phone and web services, and other essential needs in the Office of Collector, as authorized by statute.

Auditor's Comment

The audit finding is not questioning the services provided by the NTLA. The finding takes exception with TMF disbursements to the NTLA for event sponsorships, general advertisements, and donations because they are not related to necessary services for the County Collector's office, and therefore, may not be allowable or beneficial disbursements from the TMF.

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Organization and Statistical Information

The County Collector bills and collects property taxes for the county and some local governments and conducts annual tax sales in accordance with Chapter 140, RSMo. Pursuant to Section 52.015, RSMo, the term for which collectors are elected expires on the first Monday in March of the year in which they are required to make their last final settlement for the tax book collected by them. Annual settlements are to be filed with the county commission for the fiscal year ended February 28 (29). Property taxes and other monies collected by the Clay County Collector's office totaled approximately \$420 million during the year ended February 28, 2019.

Lydia McEvoy, County Collector, began serving her third 4-year term effective March 1, 2018. She received a salary of \$77,106 for the year ended December 31, 2018. The County Collector's office employed 2 deputy collectors, 1 bookkeeper, 1 assistant bookkeeper, 1 office manager, and 6 cashiers on December 31, 2018. In addition, the County Collector's office employed 3 temporary workers to help during the busy season.