



Scott Fitzpatrick

Missouri State Auditor

Howell County

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auditor.mo.gov



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Missouri State Auditor

CITIZENS SUMMARY

Summary of findings in the audit of Howell County

Sales Tax Rollback	The county did not properly report property tax levy reductions to the State Auditor's Office, accurately calculate property tax reduction amounts, or consider whether transfers were needed to the Special Road and Bridge Fund to replace lost property tax revenue.
Electronic Communication Policy	The county has not developed a records management and retention policy that includes electronic communication in compliance with the Missouri Secretary of State Records Services Division guidance, as approved by the Missouri Local Records Commission.
County Collector's Commissions	The former County Collector improperly withheld and personally retained commissions on surtax and railroad and utility taxes collected for cities.
Additional Comments	Because counties are managed by several separately-elected individuals, an audit finding made with respect to one office does not necessarily apply to the operations in another office. The overall rating assigned to the county is intended to reflect the performance of the county as a whole. It does not indicate the performance of any one elected official or county 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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SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

County Commission
and
Officeholders of Howell County

We have audited certain operations of Howell County in fulfillment of our duties under Section 29.230, RSMo. The scope of our audit included, but was not necessarily limited to, the year ended December 31, 2021. The objectives of our audit were to:

1. Evaluate the county's internal controls over significant management and financial functions.
2. Evaluate the county'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 minutes of meetings, written policies and procedures, financial records, and other pertinent documents; interviewing various personnel of the county; and performing sample testing using haphazard and judgmental selection, as appropriate. The results of our sample testing cannot be projected to the entire populations from which the test items were selected. We obtained an understanding of internal control that is significant to the audit objectives and planned and performed procedures to assess internal control to the extent necessary to address our audit objectives. 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, grant agreement, or other 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's management and was not subjected to the procedures applied in our audit of the county.

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 Howell County.

A handwritten signature in black ink that reads "Scott Fitzpatrick". The signature is written in a cursive style with a large initial "S" and "F".

Scott Fitzpatrick
State Auditor

Howell County Management Advisory Report State Auditor's Findings

1. Sales Tax Rollback

The county did not properly report property tax levy reductions to the State Auditor's Office, accurately calculate property tax reduction amounts, or consider whether transfers were needed to the Special Road and Bridge Fund (SRBF) to replace lost property tax revenue.

Section 67.505, RSMo, requires the county to reduce property taxes for a percentage of sales taxes collected. Howell County voters enacted a one-half cent sales tax with a provision to reduce property taxes by 50 percent of sales taxes collected. The county is required to estimate the annual property tax levies to meet the 50 percent reduction requirement and provide for an adjustment for actual sales tax collections of the preceding year that are more or less than the estimate for the preceding year. The county is required to certify to the State Auditor's Office (SAO) the annual property tax levies including the amount the levies are reduced for sales tax collections, as well as any voluntary reductions.

The county did not properly report property tax reductions to the State Auditor's Office. For 2018 through 2021, the county only certified sales tax reductions for both the General Revenue Fund (GRF) and SRBF levies, when both sales tax and voluntary reductions were made. For example, the County Clerk's worksheets for 2021 indicated a required sales tax reduction of \$.2151 per \$100 of assessed valuation, but the county reported to the SAO sales tax reductions totaling \$.3080 per \$100 of assessed valuation. This \$.2151 reduction would not have reduced the GRF levy to \$.0000 but the county further reduced the levy by \$.0608 to get the GRF levy to \$.0000. Then the county also reduced the SRBF levy by \$.0321 to get the SRBF levy to \$.1775. These additional reductions are voluntary reductions but were reported as sales tax reductions. Voluntary reductions could impact the county's tax rate ceiling and the county's ability to increase the levy at the discretion of the County Commission. The County Clerk indicated the County Commission decided upon the actual levies for the GRF and SRBF and the county reported sales tax reductions from the tax rate ceilings to arrive at the decided levies.

The county did not accurately calculate the property tax reduction as the county did not account for any difference between estimated and actual sales taxes collected for the preceding year. The failure to properly account for this difference can either further increase or decrease the sales tax reduction required depending on whether more or less sales tax was actually received than what was estimated.

The county did not consider whether transfers were needed to the SRBF to replace lost property tax revenue to the SRBF due to the reduced property tax levy. The county deposited all of the sales tax revenues to the GRF and none to the SRBF even though some of the SRBF levy was reduced. The county has not considered the effects to the SRBF of any property tax revenues to the SRBF lost due to the sales tax reduction to the SRBF levy.



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Management Advisory Report - State Auditor's Findings

Section 137.073.5(4), RSMo, provides that a voluntary reduction taken in a non-reassessment year (even year) results in a reduced tax rate ceiling during the subsequent reassessment year (odd year). Additionally, since revenues of the SRBF are required by Section 137.555, RSMo, to be used only for improving and maintaining county roads and bridges, any lost property tax revenues of the SRBF that relate to the sales tax rollback requirement should be reimbursed by the GRF.

According to the County Clerk and County Commission, they set the rates lower than required for the sales tax reduction but were unfamiliar with the need to separate the reduction into a voluntary and sales tax reduction component, and they were unaware of the requirement to account for the difference between estimated and actual sales tax reductions or transfer sales tax revenues from the GRF to the SRBF for any lost property tax revenues.

To ensure property tax levies are properly set and property tax rate ceilings are maintained, property tax levy reductions must be accurately calculated, reported, and certified. Accurate property tax levy reductions are also necessary to determine whether transfers of sales tax revenues are needed to ensure SRBF funds are expended in accordance with state law.

Recommendation

The County Commission and County Clerk properly calculate and report property tax rate reductions (sales tax or voluntary) and determine whether any transfer is needed to the Special Road and Bridge Fund.

Auditee's Response

Howell County has a long tradition of upholding a commitment that was made long ago to the citizens of the county, that if they passed a sales tax, the County Commission would do everything they could to keep the General Revenue tax levy at 0.0000, and as low as possible for the Special Road and Bridge Fund. Since 1985 the County has used an equivalent equation to arrive at the current levy of 0.0000 for General Revenue, even though we could set the levy at a higher rate. The calculation was a benefit to the citizens of Howell County and was a financial disservice to the County. The County will review the recommendation from the State Auditor's Office (SAO) when setting our levy for the upcoming year; however, following the SAO's recommendation may result in an increased levy in subsequent years.

Auditor's Comment

While the county's response indicates the tax levies may increase in subsequent years if the county follows the audit recommendation, the recommendation is for the county to calculate and report property tax reductions in accordance with state law. Properly reporting sales tax reductions and voluntary reductions, if applicable, may result in changes to the calculations in subsequent years due to a reduced tax rate ceiling, however, the county may still take voluntary reductions in those years to obtain the tax levy desired. Additionally, Section 137.073.5(4), RSMo,



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outlines a process for the county to increase its tax rate, if desired, in the year following the reduction to the tax ceiling.

2. Electronic Communication Policy

The county has not developed a records management and retention policy that includes electronic communication in compliance with the Missouri Secretary of State Records Services Division guidance, as approved by the Missouri Local Records Commission. This guidance recommends government entities have a policy on electronic messaging, including text messages, email, and other third party platforms.

Section 109.270, RSMo, provides that all records made or received by an official in the course of his/her public duties are public property and are not to be disposed of except as provided by law. Section 109.255, RSMo, provides that the Local Records Board issue directives for the destruction of records. The guidelines for managing electronic communications records can be found on the Secretary of State's website.¹

Development of a written policy to address the use of electronic communications is necessary to ensure all documentation of official business of the county is retained as required by state law. The County Commission indicated it was unaware of the record retention requirements and electronic communication guidelines.

Recommendation

The County Commission work with other county officials to develop a written records management and retention policy to address electronic communications management and retention to comply with Missouri Secretary of State Records Services Division electronic communications guidelines.

Auditee's Response

Howell County has contracted with an information technology firm to analyze our cybersecurity. Part of the service they are providing is developing policies and procedures to address the use of electronic communications.

3. County Collector's Commissions

The former County Collector improperly withheld and personally retained commissions on surtax and railroad and utility taxes collected for cities. These commissions totaled \$4,051 for the year ended February 28, 2022.

The collection of surtax and railroad and utility taxes is a part of the County Collector's statutorily required duties, and he should not receive additional compensation for collecting these taxes. However, the former County Collector withheld and personally retained a 3 percent commission and

¹ Missouri Secretary of State Records Services Division, *Electronic Communications Records Guidelines for Missouri Government*, May 14, 2019, is available at <<https://www.sos.mo.gov/CMSImages/LocalRecords/CommunicationsGuidelines.pdf>>, accessed April 25, 2023.



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Management Advisory Report - State Auditor's Findings

retained a penalty charge added to delinquent taxes from surtax and railroad and utility taxes for the cities of West Plains and Willow Springs.

The County Collector and County Commission have written agreements with cities for property tax collection services that provide for the County Collector to personally retain a 3 percent collector commission on all city tax collections and a penalty charge on delinquent taxes. These agreements may be proper if a County Collector is not already required by law to collect the tax in question. Because the collection of surtax and railroad and utility taxes is a statutorily required duty, these contract terms conflict with state law and the County Collector should not receive this additional compensation. The County Collector would collect surtax and railroad and utility money for these cities even if he did not collect city levied property taxes for them. For the year ended February 28, 2022, the County Collector received \$50,793 in commissions for collecting property taxes for cities, \$4,051 of which was received improperly for the collection of surtax and railroad and utility taxes.

Since our prior audit questioned the propriety of withholding commissions on surtax and railroad and utility taxes collected for cities, the former County Collector provided the audit finding and city contracts to 3 law firms and obtained legal opinions in 2020, 2022, and 2023, that he believes supports the practice of withholding commissions on surtax and railroad and utility taxes collected for cities. However, the opinions focus on the authority of the city and county to contract for the provision of services and do not address the fact that the County Collector is already required by law to collect the surtax, railroad, and utility taxes, and that collection of those taxes is not a service that the cities would need to contract with the County Collector to provide.

Section 151.180, RSMo, requires the County Collector to collect all railroad taxes and Section 151.280, RSMo, requires the County Collector to withhold and pay a 1 percent commission on these taxes to the county's General Revenue Fund. Section 153.030, RSMo, requires utility taxes to be levied and collected in the same manner as railroad taxes. Section 139.600, RSMo, requires the collection of surtax, including those amounts distributed to the cities, to be a statutory responsibility of county collectors, and commissions retained on surtax collections should be distributed to the county's General Revenue Fund.

A similar condition was noted in our prior audit report.

Recommendation

The County Collector discontinue personally retaining commissions withheld on surtax and railroad and utility taxes and distribute these collections in accordance with state law.



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Auditee's Response

The current County Collector provided the following response:

As the newly elected County Collector of Howell County, I agree with the auditor's findings that commissions should not have been personally retained on surtax and railroad and utility taxes collected for the cities, and I ceased this practice immediately upon taking office.

I have and will abide by the statutes stated in your findings as I know that is my statutory duty. I look forward to any input from the SAO on any recommendations for the office of County Collector so the citizens of our county will know it is ran with honesty and integrity.

The former County Collector provided the following response:

Article VI, Section 16, of the Missouri State Constitution, along with Sections 50.332 and 70.220, of the Revised Statutes does allow local governments to contract and cooperate with one another to provide service.

The current co-operative agreements for the collection of city taxes between the City Councils, County Commission and County Collector in Howell County began nearly 40 years ago, and were mutually negotiated and agreed to by all parties and are still in effect today. The process to establish the terms and conditions of these agreements is well publicly documented by minutes of meeting and newspaper accounts, dating back to 1984.

Now nearly four decades later, and after 12 State Auditor Office audits, and many more independent audits (approximately 60), a provision in these long time co-operative agreements is being questioned by the State Auditor's Office.

This finding was first presented by the Auditor's Office after the previous audit. At that time the explanation given for the finding did not seem to ring true. It was suggested that an independent legal opinion might be appropriate.

In an attempt to confirm if the existing agreements indeed have legal foundation, the Collector reached out to three prominent attorneys and requested a thorough review of these long time co-operative agreements, and the State Auditor's finding. These attorneys are associated with three much respected law firms within the state and outside of this area. Each of the three attorneys responded with self-explanatory opinions that substantially concluded the same, that found the co-operative agreements in place are proper and "is constitutional and enforceable".



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Auditor's Comment

The County Collector is required by the statutes indicated in our finding to collect railroad and utility taxes and also surtax. A cooperative agreement is not needed to collect these taxes and the statutes require the commission withheld to be distributed to the county's General Revenue Fund. Cooperative agreements are needed to collect other city property taxes, and retention of these commissions is allowable. The concern is not cooperative agreements, but rather retention of personal commissions for collecting taxes that are already statutorily required to be collected by the County Collector. Any commissions received for collecting taxes the County Collector is required to collect by law are required to be distributed to the county's General Revenue Fund.

Howell County Organization and Statistical Information

Howell County is a county-organized, third-class county. The county seat is West Plains.

Howell County's government is composed of a three-member county commission and separate elected officials performing various tasks. All elected officials serve 4-year terms. The county commission has mainly administrative duties in setting tax levies, appropriating county funds, appointing board members and trustees of special services, accounting for county property, maintaining county roads and bridges, and performing miscellaneous duties not handled by other county officials. Principal functions of these other officials relate to law enforcement, property assessment, property tax collections, conduct of elections, and maintenance of financial and other records important to the county's citizens. In addition to elected officials, the county employed 110 full-time employees and 14 part-time employees on December 31, 2021.

In addition, county operations include the Senate Bill 40 Board.

Elected Officials

The elected officials and their compensation paid for the year ended December 31 (except as noted) are indicated below:

Officeholder	2022	2021
Mark B. Collins, Presiding Commissioner	\$	40,281
Calvin Wood, Associate Commissioner		39,740
Billy Sexton, Associate Commissioner		39,740
Jeffrey Brasier, Recorder of Deeds		57,181
Kelly Waggoner, County Clerk		57,181
Michael P. Hutchings, Prosecuting Attorney (1)		69,888
Brent Campbell, Sheriff		65,535
Nancy Franz, County Treasurer		57,181
James T. Cherry, County Coroner		22,331
John Pruett, Public Administrator		59,181
Dennis K. Von Allmen, County Collector (2), year ended February 28,	108,536	
Daniel Franks, County Assessor, year ended August 31,		56,936
Ralph Riggs, County Surveyor (3)		

- (1) The Prosecuting Attorney was a part-time position until January 3, 2023, when the Prosecuting Attorney became a full-time position. Voters approved this change during the August 2, 2022, elections.
- (2) Includes \$50,793 of commissions received for collecting property taxes for cities.
- (3) Compensation on a fee basis.

Other Information

In April 2022, Howell county voters approved an additional county-wide sales tax of one-fourth of one percent for ten years for law enforcement services.