



**South Carolina
Office of the State Auditor**

**George L. Kennedy, III, CPA
State Auditor**

May 25, 2017

Mr. Lewis J. Swindler, Director
South Carolina Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212

RE: Criminal Justice Academy testimony before the Legislative Oversight Committee on April 19th

Mr. Swindler:

In reviewing the video of the April 19th meeting of the Legislative Oversight Committee during which you, Mike Lanier and Tom McQueen discussed your agency's funding issues with the committee, I noted several comments made by you or your team (between approximately minutes 7 and 25) that were either misleading or incorrect. It is important that you be provided with accurate information regarding the engagements for county and municipal treasurers and clerks of court to determine whether mandated fees are properly assessed, collected and remitted. Please note that the comments by you or your team, which appear in italics and underlined below, are paraphrased.

The State does not appear for some time to have audited these cities, counties and courts

South Carolina Code Section 14-1-210 defines the responsibilities of the Office of the State Auditor with regard to court fines, fees and assessments. Additionally, Proviso 105.4 (2016-2017) requires that the State Auditor conduct a minimum of 15 audits required by Code Section 14-1-210 annually or as many as the funds provided will allow if less than 15. We have fulfilled our responsibilities under Code Section 14-1-210 for every year since 2006, the year we began performing engagements related to fines, fees and assessments.

Each court report issued is distributed in accordance with Code Section 14-1-210. That distribution includes the chairmen of the House Ways and Means Committee, Senate Finance Committee, House Judiciary Committee, Senate Judiciary Committee and the Governor as well as the Office of Victim Assistance, the Chief Justice of the State Supreme Court and the State Treasurer. A summary of our findings related to these engagements is provided annually to the Chairmen of the House Ways and Means Committee and Senate Finance Committee. As a courtesy, we copy the Chairmen of the House Judiciary Committee, the Senate Judiciary Committee, the Office of Victim Assistance, the Chief Justice of the State Supreme Court and the State Treasurer on the annual summary of findings. Additionally, every court engagement issued since 2006 appears on our agency website at www.osa.sc.gov.

The Treasurer requests the audits; the audits are sanctioned and spurred on by the Treasurer's Office

As noted above, Code Section 14-1-210 gives the Office of the State Auditor the responsibility for auditing the court fines, fees and assessments. The Treasurer's Office, as the State's banking function, transfers the funding associated with these responsibilities, but they do not request, sanction or "spur on" these engagements.

We do, however, leverage the knowledge that Treasurer's Office personnel have about the payment patterns of counties and municipalities and work closely with them in determining which entities to select for performance of an engagement. While we value the Treasurer's Office input, the decisions for which entities to test are the responsibility of the Office of the State Auditor, which is important in assuring an independent examination function.

\$250,000 of our money is used for the audits

As outlined in Code Section 14-1-210 (B) the Treasurer transfers \$250,000 to the Office of the State Auditor as follows: the first \$10,900 received from General Sessions Court, the first \$136,600 received from magistrate court and the first \$102,500 received from municipal court. Had this specific transfer not been made, those funds, like the funds collected subsequent to this transfer, would be distributed pursuant to Code Sections 14-1-206, 14-1-207 and 14-1-208, which outlines certain percentages to the Law Enforcement Training Council as well as a number of other recipients, including the Shock Incarceration Program, Victim Assistance, Office of Indigent Defense, the general fund and others.

They're not really doing a true audit, it's a sampling; they'll pick 4, 5, 6 or 8, sometimes up to 10 citations

We carry out our responsibilities under Code Section 14-1-210 using agreed-upon procedures engagements rather than audits. An audit is highly desirable for many purposes, but the auditing standards to which we are bound as Certified Public Accountants drive the up the time, risk exposure and overall cost to the point that there are diminishing returns to using audits for some purposes. Agreed-upon procedures, while not an audit, were developed by the auditing profession to be used in appropriate situations, typically where the user has an interest in specified elements (such as compliance with state requirements) and is not interested in independent assurance with regard to the financial position of an entity as a whole. We have performed agreed-upon procedures since 2006, and believe they have proven to be a cost effective alternative to an audit in carrying out Code Section 14-1-210.

With regard to sample sizes, our standard sample size is 25, however when the population is less than 250, our sample sizes may be less. Our sample sizes are disclosed in each report.

Based on sampling standards promulgated by the American Institute of Certified Public Accountants, a standard-setting body, we believe our samples to be statistically relevant in determining compliance with the requirements related to fines, fees and assessments. Even if we performed an audit of court fines, fees and assessments, we would employ sampling, as sampling is an important audit technique used to gain a high level of assurance in an efficient manner, as auditing 100% of transactions is inefficient and rarely yields additional audit value.

They have a disclaimer that it's not a true audit

In an audit, the Certified Public Accountant is expressing an opinion on the reliability of the underlying financial statements. This opinion by an independent auditor is valuable in providing confidence to management, investors, debt markets, and in the case of governments, the citizens, regarding the accuracy and reliability of historical financial information. It is important for the user of our agreed-upon procedures reports to understand that an audit has not been performed and therefore we are expressing no opinion on compliance with the collection and distribution of court fines, fees and

assessments. However we designed the procedures we use in agreed-upon procedures engagements for fines, fees and assessments to have a direct correlation with the requirements stated in Code Section 14-1-210, and to be an effective tool in identifying issues with compliance with State requirements. In the nearly 12 years of using them, we believe they have been effective and cost-efficient in that regard.

More audits used to be done; we saw 15 one year, then 7 and then they got down to 4

As previously noted, our agency website contains all court reports issued since 2006. The number of reports issued ranges from a low of 6 (in 2012) to a high of 28 (in 2007). The average over 11 years is 15 per year, with 8 reports having been issued in 2017 year-to-date.

It is important to note that our staff size was cut tremendously during the recession to the extent that we were limited in our ability to meet our statutory requirements in a timely manner. As a result, we began utilizing Certified Public Accounting firms in 2014 to perform court engagements. This has worked well, and while our staff are still integrally involved in the overall planning and the quality control review of the reports related to these engagements, outsourcing assures the core work is performed regardless of the availability of internal resources.

Additionally, I would agree with your comment that these engagements play an important part in identifying problems and helping to assure compliance. However, as you noted, the amount of revenue collected is primarily driven by the number of tickets that are issued. This is a complex issue and there are many causes to why collections vary year-to-year including the ability (or even the desire in some cases) of the counties and municipalities to remit what they owe. While our examinations can identify issues and amounts owed, we have no ability to influence either the number of tickets issued or the ability or desire of counties or municipalities to remit what they owe.

Finally, shortly after taking the position of State Auditor in 2015, I became aware that the Criminal Justice Academy had issues with the performance of the Office of the State Auditor with regard to court engagements. I initiated a meeting with Mr. Harrell, director at that time, and Mr. Lanier and Mr. McQueen were both in attendance. The purpose of the meeting was to open a dialogue as to how we could help with what the Criminal Justice Academy viewed as issues. I am disappointed that your team did not encourage you to reach out to me to gain a better understanding of the role we play in this process and discuss directly your concerns, but I hope the information I have provided above gives you a clearer sense of the role we play.

Please know that I am happy to meet with you at any time to discuss how we may be of better service.

Very truly yours,

Signature Redacted

George L. Kennedy, III, CPA
State Auditor

cc: Representative Eddie R. Tallon, Sr.
Mr. Charles Appleby