

November 21, 2019

VIA EMAIL

The Honorable Ronald D. Kouchi
Senate President
415 South Beretania Street
Hawaii State Capitol, Room 409
Honolulu, Hawaii 96813

VIA EMAIL

The Honorable Scott K. Saiki
Speaker, House of Representatives
415 South Beretania Street
Hawaii State Capitol, Room 431
Honolulu, Hawaii 96813

Re: Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts of the Department of the Attorney General, Report No. 19-16

Dear President Kouchi and Speaker Saiki:

Please find attached Report No. 19-16, *Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts of the Department of the Attorney General*, along with the Auditor's Summary, which has also been uploaded to the Legislature's web-based application. This report presents a five-year summary for each special fund, revolving fund, trust fund, and trust account maintained by the Department of the Attorney General, evaluates the original intent and purpose of each fund and account, and determines the degree to which each fund and account achieves its stated and claimed purpose.

The report is accessible through our website at:
<http://files.hawaii.gov/auditor/Reports/2019/19-16.pdf>.

The summary is also accessible through our website at:
<http://files.hawaii.gov/auditor/Overviews/2019/19-16AuditorSummary.pdf>.

If you or other Legislators would like a printed version of the report, please let me know.

Very truly yours,

Leslie H. Kondo
State Auditor

LHK:emo

Attachments

ec/attach: Senators
Representatives
Carol Taniguchi, Senate Chief Clerk
Brian Takeshita, House Chief Clerk

Auditor's Summary

Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts of the Department of the Attorney General

Twenty-one special funds, revolving funds, trust funds, and trust accounts were reviewed.

Report No. 19-16

Six funds and accounts did not meet criteria.

WE REVIEWED 21 FUNDS AND ACCOUNTS administered by the Department of the Attorney General (AG) and reported on 19 of them. We found two revolving funds, two trust funds, and two trust accounts did not meet criteria. We recommended two revolving funds and one trust fund be reclassified as special funds; one trust fund be reclassified as a trust account; one trust account be reclassified as a trust fund; and one trust account be closed.

Section 23-12, Hawai'i Revised Statutes (HRS), requires the Auditor to review all existing special, revolving, and trust funds every five years. Reviews are scheduled so that each department's funds are reviewed once every five years. Although not mandated by statute, we include trust accounts as part of our reviews. This is our sixth review of AG's revolving funds, trust funds, and trust accounts, and our second review of AG's special funds.

We use criteria developed by the Legislature, the Department of Accounting and General Services, and by our office based on public finance and accounting literature. For each fund, we present a five-year financial summary, the purpose of the fund, and conclusions about its use. Financial data is provided for informational purposes and has not been audited. We do not present conclusions about the effectiveness of programs or their management, or whether the programs should be continued.

Reporting shortfall

WE NOTED THAT AG did not file statutorily required reports for non-general funds with balances totaling \$84,000 and for administratively created funds with balances totaling more than \$1 million. Accurate and complete reporting provides important information to legislators about an agency's financial position.



FUND TYPES

SPECIAL FUNDS

are used to account for revenues earmarked for particular purposes and from which expenditures are made for those purposes.

REVOLVING FUNDS

such as loan funds, are often established with an appropriation of seed money from the general fund and must demonstrate the capacity to be self-sustaining.

TRUST FUNDS

such as a pension fund, invoke the State's fiduciary responsibility to care for and use the assets held to benefit those with a vested interest in the assets.

TRUST ACCOUNTS

are typically separate holding or clearing accounts and are often used as accounting devices for crediting or charging state agencies or projects for payroll and other costs.

Agency response

THE DEPARTMENT DISAGREED with our assessment that four funds and one account did not meet their respective criteria; however, we maintain that our analyses and conclusions are appropriate. A detailed response to AG's position is included with the report.

As to our other observations, AG stated that the department will take steps to ensure compliance with reporting requirements and provide internal training to ensure transfers are correctly classified.

Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts of the Department of the Attorney General

A Report to the Governor
and the Legislature of
the State of Hawai'i

Report No. 19-16
November 2019



OFFICE OF THE AUDITOR
STATE OF HAWAII



OFFICE OF THE AUDITOR STATE OF HAWAII

Constitutional Mandate

Pursuant to Article VII, Section 10 of the Hawai'i State Constitution, the Office of the Auditor shall conduct post-audits of the transactions, accounts, programs and performance of all departments, offices and agencies of the State and its political subdivisions.

The Auditor's position was established to help eliminate waste and inefficiency in government, provide the Legislature with a check against the powers of the executive branch, and ensure that public funds are expended according to legislative intent.

Hawai'i Revised Statutes, Chapter 23, gives the Auditor broad powers to examine all books, records, files, papers and documents, and financial affairs of every agency. The Auditor also has the authority to summon people to produce records and answer questions under oath.

Our Mission

To improve government through independent and objective analyses.

We provide independent, objective, and meaningful answers to questions about government performance. Our aim is to hold agencies accountable for their policy implementation, program management, and expenditure of public funds.

Our Work

We conduct performance audits (also called management or operations audits), which examine the efficiency and effectiveness of government programs or agencies, as well as financial audits, which attest to the fairness of financial statements of the State and its agencies.

Additionally, we perform procurement audits, sunrise analyses and sunset evaluations of proposed regulatory programs, analyses of proposals to mandate health insurance benefits, analyses of proposed special and revolving funds, analyses of existing special, revolving and trust funds, and special studies requested by the Legislature.

We report our findings and make recommendations to the Governor and the Legislature to help them make informed decisions.

For more information on the Office of the Auditor, visit our website:
<http://auditor.hawaii.gov>

Foreword

This is a report of our review of the special funds, revolving funds, trust funds, and trust accounts administered by the State of Hawai‘i, Department of the Attorney General.

Section 23-12, Hawai‘i Revised Statutes (HRS), requires the Auditor to review all existing special, revolving, and trust funds once every five years. Although not mandated by statute, we included trust accounts as part of our review. This is our sixth review of the Department of the Attorney General’s revolving funds, trust funds, and trust accounts, and our second review of its special funds.

We wish to express our appreciation for the cooperation and assistance extended to us by the officials and staff of the Department of the Attorney General.

Leslie H. Kondo
State Auditor



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Chapter 1

Introduction

This review encompasses the special funds, revolving funds, trust funds, and trust accounts administered by the State of Hawai‘i, Department of the Attorney General (AG). Section 23-12, Hawai‘i Revised Statutes (HRS), requires the Auditor to review each state department’s special, revolving, and trust funds every five years. Specifically, the Auditor’s review must include:

1. An evaluation of the original intent and purpose of each fund, both as expressed by the Legislature and as understood by the expending agency;
2. The degree to which each fund achieves its stated and claimed purposes;
3. An evaluation of the fund’s performance standards as established by the agency; and
4. A summary statement reflecting total fund transactions in the preceding five fiscal years, including the fund balance at the beginning of each fiscal year, total deposits and withdrawals, amount of interest earned, total expenditures made from the fund, and the ending balance for each fiscal year.

This is our sixth review of AG’s revolving funds, trust funds, and trust accounts.¹ It is our second review of AG’s special funds since Act 130, Session Laws of Hawai‘i (SLH) 2013, amended Section 23-12, HRS, to require we review special funds along with revolving funds and trust funds. Although not mandated by Section 23-12, HRS, we have included trust accounts as part of our review. Trust accounts, like special, revolving, and trust funds, are funded outside of the general fund appropriation process and, generally, are subject to minimal legislative scrutiny. We last examined these funds and accounts in 2014.

¹ Prior to 2013, Section 23-12, HRS, did not require reviews of departments’ special funds.

Description of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts

Special funds

Section 37-62, HRS, defines a special fund as one that is “dedicated or set aside by law for a specified object or purpose, but excluding revolving funds and trust funds.” According to the State’s Accounting Manual, special funds are funds used to account for revenues earmarked for particular purposes and from which expenditures are made for those purposes.

Revolving funds

Section 37-62, HRS, defines a revolving fund as one “from which is paid the cost of goods and services rendered or furnished to or by a state agency and which is replenished through charges made for the goods or services or through transfers from other accounts or funds.” Activities commonly financed through revolving funds include loan programs, which are initially established by general fund seed moneys and are then replenished through the repayment of loans.

Trust funds

Section 37-62, HRS, defines a trust fund as one in which “designated persons or classes of persons have a vested beneficial interest or equitable ownership, or which was created or established by a gift, grant, contribution, devise or bequest that limits the use of the fund to designated objects or purposes.” Trust funds invoke a fiduciary responsibility of state government to care for and use only for those designated to benefit from the funds. A pension fund is an example of a trust fund. Contributions and payments are to be held for the beneficiaries of the pension fund. Another example is tenants’ security deposits, which are held in trust for the future benefit of tenants and landlords. Until forfeited or returned, deposits are the property of the tenants and should be accounted for accordingly.

Trust accounts

The Department of Accounting and General Services (DAGS) defines a trust account as a separate holding or clearing account for state agencies. Trust accounts also serve as accounting devices to credit or charge agencies or projects for payroll or other costs.

Criteria for Reviewing Special Funds, Revolving Funds, Trust Funds, and Trust Accounts

Special and revolving fund criteria

In 2002, the Legislature set the requirements for establishing and continuing special and revolving funds. Sections 37-52.3 and 37-52.4, HRS, state that special and revolving funds may only be established by statute. The criteria used to review special and revolving funds are the extent to which each fund:

- Serves a need, as demonstrated by: (a) the purpose of the program to be supported by the fund; (b) the scope of the program, including financial information on fees to be charged, sources of projected revenue, and costs; and (c) an explanation of why the program cannot be implemented successfully under the general fund appropriation process;
- Reflects a clear nexus between the benefits sought and charges made upon the program users or beneficiaries, or a clear link between the program and the sources of revenue – as opposed to serving primarily as a means to provide the program or users with an automatic means of support, removed from the normal budget and appropriation process;
- Provides an appropriate means of financing for the program or activity that is used only when essential to the successful operation of the program or activity; and
- Demonstrates the capacity to be financially self-sustaining.

Trust fund and trust account criteria

Unlike the requirements for special and revolving funds, the law is silent on whether a trust fund or trust account must be established by statute. The criteria used to review trust funds and trust accounts are the extent to which each fund and account:

- Continues to serve the purpose and intent for which it was originally created; and
- Meets the definition of a trust fund or trust account, respectively.

The first criterion is derived from the objectives of Section 23-12, HRS, which requires the Auditor to evaluate the original intent of each fund and account and the degree to which each fund and account achieves its stated purpose. The second criterion assesses whether a fund is held by the State only for the benefit of those with a vested interest in the assets or an account is held as a separate or clearing account.

Objectives of the Review

1. Identify and review all special funds, revolving funds, trust funds, and trust accounts of AG.
2. For each special fund, revolving fund, trust fund, and trust account, determine whether the fund or account meets the respective criteria.
3. Provide a five-year (FY2015 – FY2019) unaudited financial summary for each fund and account of AG.

Scope and Methodology

We reviewed all special funds, revolving funds, trust funds, and trust accounts directly administered by AG during the five-year period under review (FY2015 – FY2019). Funds and accounts included those established by statute as well as by administrative authority.

To identify funds subject to this review, we used a variety of sources, including our prior reviews, accounting reports from DAGS, non-general fund reports, legislative budget briefing documents, and other records. To gain an understanding of fund operations, we reviewed applicable agency administrative rules and interviewed key fiscal and program personnel, as necessary.

We obtained a summary statement for each fund that reflects total fund transactions in the preceding five fiscal years (July 1, 2014 to June 30, 2019), including beginning fund balances, total revenues, amount of interest earned, total expenditures, transfers, and ending fund balances for each fiscal year. We requested explanations for discrepancies

between ending balances for FY2014 reported in our last review and opening balances reported for FY2015. We did not audit AG's financial data, which are provided for informational purposes only.

Procedures were performed on each fund using relevant criteria as stated above. We reviewed fund information for consistency with the intent of each fund's use and to ascertain the relationship between charges on users and expenditures. We reviewed and compared fund balances to financial activity and projected program needs and standards. We reviewed information on performance standards established for the funds or accounts and performed other procedures, as necessary.

Where appropriate, we relied on our prior reports, including Report No. 14-13, *Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts of the Departments of the Attorney General and Business, Economic Development and Tourism*.

Our review was conducted in August and September 2019. Recommendations were made where applicable.

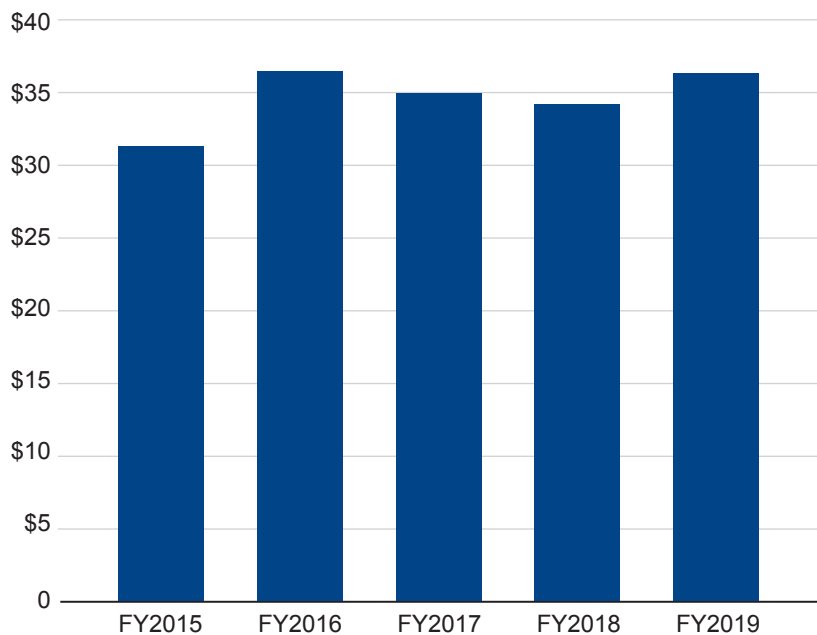
Chapter 2

Department of the Attorney General

This section presents the results of our review of five special funds, three revolving funds, four trust funds, and seven trust accounts. Total fund fiscal year-end balances amounted to at least \$31 million per year during the period reviewed.

Exhibit 2.1 summarizes the totals for these fund balances at the end of each fiscal year.

Exhibit 2.1
Cash Balances for AG Non-General Funds
FY2015 – FY2019 (in millions)



Source: Office of the Auditor

Substantial amounts were also collected and expended by the funds annually. In FY2019, the special funds, revolving funds, trust funds, and trust accounts collected more than \$132 million and spent or transferred more than \$129 million.

Exhibit 2.2 presents totals for the combined revenue and interest, expenses and transfers, and ending fund balances for the different fund types for FY2019.

Exhibit 2.2
AG Fund and Account Totals by Type, FY2019

Fund Type	Revenue and Interest	Expenses and Transfers	FY2019 End Cash Balance
Special Funds	\$3,844,000	\$5,065,000	\$4,123,000
Revolving Funds	4,010,000	3,433,000	3,284,000
Trust Funds and Trust Accounts	124,208,000	121,446,000	29,128,000
Total	\$132,062,000	\$129,944,000	\$36,535,000

Source: Office of the Auditor

For each fund, we present a five-year financial summary, the purpose of the fund, and conclusions about its use and whether it meets the definition of a special fund, revolving fund, trust fund, or trust account. We do not assess the effectiveness of programs and their management. The funds are presented in alphabetical order.

Exhibit 2.3 presents AG’s funds that did not meet criteria for continuance and should be closed or reclassified.

**Exhibit 2.3
AG Funds Not Meeting Criteria**

Fund Name	Fund Type	FY2019 Ending Balance (rounded)	No longer serves original purpose and/or does not serve a need	No clear nexus between benefits sought and user charges or a clear link between the program and revenue sources	Inappropriate financing mechanism	Not financially self-sustaining	Does not meet special fund, revolving fund, trust fund, or trust account definition
Antitrust Trust Fund*	Trust Fund	\$219,000					✓
Criminal Forfeiture Revolving Fund*	Revolving Fund	\$330,000					✓
Hawai'i Criminal Justice Commission Trust Account**	Trust Account	\$0	✓				
Litigation Deposits Trust Fund*	Trust Fund	\$4,038,000					✓
National Mortgage Settlement*	Trust Account	\$66,000					✓
Notaries Public Revolving Fund*	Revolving Fund	\$340,000					✓
Total		\$4,993,000					

* Reclassification to a different type of fund is recommended.

** AG has submitted fund for closure in FY2020.

Source: Office of the Auditor

**Antitrust Trust Fund
(trust fund)****Section 28-13, HRS****Financial Data for Fiscal Years 2015 – 2019 (in thousands)**

	FY2015	FY2016	FY2017	FY2018	FY2019
Beginning Balance	\$52	\$48	\$48	\$385	\$247
Revenues	0	0	339	1,021	0
Interest	0	0	0	1	0
Expenditures*	(4)	(0)	(2)	(1,160)	(28)
Transfers	0	0	0	0	0
Ending Balance**	\$48	\$48	\$385	\$247	\$219
Encumbrances	\$0	\$0	\$0	\$0	\$0

*Expenditures for FY2018 include transfers totaling \$763,774 to the State Treasury of the net cash balances for the DDAVP Settlement Funds, Provigil Settlement Funds, and the DRAM Settlement Funds as well as a transfer of \$4,189 made to the State Treasury per Section 28-13, HRS, which requires that unencumbered and unexpended moneys in excess of \$250,000 remaining in the antitrust trust fund at the close of June 30 of each year shall lapse to the credit of the general fund.

**FY2017 ending balance of \$385,000 included a settlement of \$166,974 which was awaiting distribution; the unencumbered amount in the fund was below the \$250,000 statutory cap on the fund.

This fund does not meet the criteria of a trust fund but continues to serve the purpose for which it was originally established. Statutorily established in 2001, the fund is used to facilitate the enforcement of antitrust laws. Revenues are from antitrust judgments and settlements. The fund receives ten percent of antitrust judgments or settlements received by the State, and any appropriations made by the Legislature. Expenditures include costs relating to the enforcement of antitrust laws, including but not limited to expenditures for training, equipment, purchases, educational resources, and facilitating participation in antitrust lawsuits and investigations initiated by other states.

In our prior review of the fund, Report No. 14-13, we similarly concluded that the fund operates like a special fund. We stated that the fund did not meet the definition of a trust fund because there are no designated persons or classes of persons having a vested beneficial interest or equitable ownership in the assets of the fund. In their response, AG felt that there was a misunderstanding regarding the fund and its role in the law enforcement mission of the department. The department stated that the purpose of the fund is “for expenditures relating to the enforcement of antitrust laws.” According to AG, because of this law enforcement function, the class of persons benefitted by the fund can include natural persons, businesses, and state and local government.

We maintain that the fund operates like a special fund, using revenues for statutorily allowed purposes rather than being held in trust for designated persons or classes of persons having a vested beneficial interest or equitable ownership and should be reclassified.

**Child Support
Collections (Not in S/T)
(trust fund)**

Section 576D-10, HRS

Financial Data for Fiscal Years 2015 – 2019 (in thousands)

	FY2015	FY2016	FY2017	FY2018	FY2019
Beginning Balance	\$17,917	\$20,853	\$22,575	\$22,043	\$22,055
Revenues	159,135	127,918	125,209	122,412	119,832
Interest	0	0	0	0	0
Expenditures	(156,199)	(126,196)	(125,741)	(122,400)	(118,656)
Transfers	0	0	0	0	0
Ending Balance	\$20,853	\$22,575	\$22,043	\$22,055	\$23,231
Encumbrances	\$0	\$0	\$0	\$0	\$0

This fund meets the criteria of a trust fund and continues to serve the purpose for which it was originally established. Statutorily established in 1986, the fund is used to deposit and disburse child support payments. Revenues are from support payments received by the agency and the federal share of the Temporary Assistance for Needy Families (TANF) collections. Expenditures include support payments disbursed by the agency. The department states that the child support collections and the TANF collections are held in two separate bank accounts in order to prevent the co-mingling of funds.

**Criminal Forfeiture
Bond Holding Fund
(trust account)**

**Administratively
established**

Financial Data for Fiscal Years 2015 – 2019 (in thousands)

	FY2015	FY2016	FY2017	FY2018	FY2019
Beginning Balance	\$36	\$13	\$13	\$13	\$13
Revenues	0	0	6	0	5
Interest	0	0	0	0	0
Expenditures	(23)	0	(6)	0	0
Transfers	0	0	0	0	0
Ending Balance	\$13	\$13	\$13	\$13	\$18
Encumbrances	\$0	\$0	\$0	\$0	\$0

This account meets the criteria of a trust account and continues to serve the purpose for which it was originally established. Administratively established in 1988, the account is used as a holding account for cost bond payments when persons who claim an interest in property seized for administrative forfeiture request judicial determination. Revenues are from cost bond payments that are forfeited based on judicial proceedings. Expenditures include payments being returned to the interested parties or forfeited moneys that are transferred to the Criminal Forfeiture Revolving Fund.

**Criminal Forfeiture
Revolving Fund
(revolving fund)**

Section 712A-16, HRS

Financial Data for Fiscal Years 2015 – 2019 (in thousands)

	FY2015	FY2016	FY2017	FY2018	FY2019
Beginning Balance	\$182	\$577	\$529	\$285	\$275
Revenues*	1,022	588	252	547	589
Interest	0	3	3	2	0
Expenditures	(627)	(639)	(499)	(559)	(534)
Transfers	0	0	0	0	0
Ending Balance	\$577	\$529	\$285	\$275	\$330
Encumbrances	\$0	\$0	\$0	\$0	\$0

*Revenues include the following transfers from the Seized Funds-Final Disposition Pending Account: \$859,013 for FY2015; \$522,821 for FY2016; \$214,115 for FY2017; \$509,250 for FY2018; and \$553,061 for FY2019.

This revolving fund continues to serve the purpose for which it was created, but functions like a special fund. Statutorily established in 1988, the fund is used to account for funds forfeited to the state, pay awards for information leading to a civil or criminal proceeding, cover training and education expenses for law enforcement officers, and support certain law enforcement-related activities, including expenses necessary to seize, detain, and sell seized property. Revenues are from forfeited assets, including cash and proceeds from the sale of property, penalty payments, and other ordered funds. Expenditures include costs for the Asset Forfeiture Program, such as payroll, transport, storage, repair of seized property, maintenance of equipment used by the program, utilities, and other expenses authorized under Section 712A-16, HRS. The fund does not meet the definition of a revolving fund because the costs of goods and services which are paid for out of the account are not replenished by the charges made for the goods and services provided. The fund operates more like a special fund, where funds are set aside by law for a specific object or purpose and should be reclassified as a special fund.

**Criminal History
Record Improvement
Revolving Fund
(revolving fund)**

Section 846-10.6, HRS

Financial Data for Fiscal Years 2015 – 2019 (in thousands)

	FY2015	FY2016	FY2017	FY2018	FY2019
Beginning Balance	\$1,498	\$1,765	\$1,679	\$1,569	\$2,179
Revenues	2,321	2,412	2,499	3,083	3,152
Interest	0	0	0	0	0
Expenditures	(2,054)	(2,498)	(2,609)	(2,473)	(2,717)
Transfers	0	0	0	0	0
Ending Balance	\$1,765	\$1,679	\$1,569	\$2,179	\$2,614
Encumbrances	\$112	\$13	\$33	\$7	\$6

This fund meets the criteria of a revolving fund and continues to serve the purpose for which it was originally established. Statutorily established in 1995, the fund is used to hold proceeds accumulated by the assessment of fees for services provided by the Hawai‘i Criminal Justice Data Center (HCJDC). The revolving fund is used as a pass-through for FBI fees collected for background checks and for National Crime Information Center (NCIC) related costs. Fees collected for HCJDC services are then expended on FBI reimbursements and NCIC related expenses. HCJDC is responsible for the collection, storage, and dissemination of all pertinent criminal justice data from all criminal justice agencies. HCJDC responsibilities include operating and maintaining the Automated Biometric Information System and Hawai‘i Sex Offender Registry, and developing the Hawai‘i Integrated Justice Information Sharing program. Expenditures include maintenance costs on hardware/software, data communication costs, and FBI and NCIC related expenses.

DNA Registry Special Fund (special fund)

Section 706-603, HRS

Financial Data for Fiscal Years 2015 – 2019 (in thousands)*

	FY2015	FY2016	FY2017	FY2018	FY2019
Beginning Balance	\$623	\$652	\$650	\$632	\$650
Revenues	35	32	33	34	30
Interest	0	0	0	0	0
Expenditures	(6)	(34)	(51)	(16)	(87)
Transfers	0	0	0	0	0
Ending Balance	\$652	\$650	\$632	\$650	\$593
Encumbrances**	\$622	\$622	\$622	\$0	\$9

* This fund is the parent account and original source of revenue for the Sex Assault Response, Train & Kit Test Fund. The financial data presented is a consolidation of this fund and the DNA Registry Special Fund and the Sex Assault Response, Train & Kit Test Fund. The department states that the Sex Assault Response, Train & Kit Test Fund was closed in FY2019 and that the remaining balance will be returned to the parent account.

** Encumbrances likely for a contract that was canceled or expired.

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 1998, the fund is used by the DNA Registry Program to defray the costs of testing, recording, preserving, and disseminating DNA information for use in investigating, prosecuting, and defending criminal cases to protect the public. Revenues are from court-ordered assessments and penalties by criminals convicted of a felony offense. Expenditures include the Hawai'i sexual assault response and training program, testing and storage of sexual assault evidence collection kits, DNA collection, DNA testing, and related costs of recording, preserving, and disseminating DNA information pursuant to Chapter 844D, HRS, relating to forensic identification.

**Federal Community
Restitution
(trust fund)**

**Administratively
established**

Financial Data for Fiscal Years 2015 – 2019 (in thousands)

	FY2015	FY2016	FY2017	FY2018	FY2019
Beginning Balance	\$3	\$3	\$3	\$3	\$3
Revenues	0	0	0	0	0
Interest	0	0	0	0	0
Expenditures	0	0	0	0	0
Transfers	0	0	0	0	0
Ending Balance	\$3	\$3	\$3	\$3	\$3
Encumbrances	\$0	\$0	\$0	\$0	\$0

This fund meets the criteria of a trust fund and continues to serve the purpose for which it was originally established. Administratively established in 2000, the fund is used to receive restitution moneys. The Antiterrorism and Effective Death Penalty Act of 1996, S.735, Sec. 205-206 (PL 104-132), authorized United States District Courts to order community restitution for certain drug offenses in which there is no identifiable victim. The state receives 65 percent of the total restitution amount, which is to be used to restore communities impacted by drug dealing and drug use. Allowable activities and expenses include crime prevention efforts, including training and public awareness, to reduce drug crimes. There has been no activity in the fund during the five-year review period.

***Hawai'i Criminal
Justice Commission
Trust Account
(trust account)***

***Section 28-10.6(a)(5),
HRS***

Financial Data for Fiscal Years 2015 – 2019 (in thousands)

	FY2015	FY2016	FY2017	FY2018	FY2019
Beginning Balance	\$3	\$0	\$0	\$0	\$0
Revenues	0	0	0	0	0
Interest	0	0	0	0	0
Expenditures	(3)	0	0	0	0
Transfers	0	0	0	0	0
Ending Balance	\$0	\$0	\$0	\$0	\$0
Encumbrances	\$0	\$0	\$0	\$0	\$0

This account does not meet all the criteria of a trust account. The account should be closed as it no longer serves the purpose for which it was created due to inactivity and lack of revenues. Statutorily established in 1985, the account's purpose was to receive deposits of financial grants and private sector donations for the Hawai'i Criminal Justice Commission to support the activities of the Commission. There are no revenues as the account has been inactive since FY2015. Expenditures include printing conference materials and advertisements to support crime prevention programs and activities. In our prior report, Report No. 14-13, we recommended that the account be closed as the account no longer serves its original purpose due to a lack of activity since FY2008. The department asserts that the account was submitted to DAGS for closure in FY2020.

**Internet Crimes Against
Children Special Fund
(special fund)**

Section 846F-4, HRS

Financial Data for Fiscal Years 2015 – 2019 (in thousands)

	FY2015	FY2016	FY2017	FY2018	FY2019
Beginning Balance	\$0	\$0	\$0	\$20	\$70
Revenues	0	0	20	50	81
Interest	0	0	0	0	0
Expenditures	0	0	0	0	(25)
Transfers	0	0	0	0	0
Ending Balance	\$0	\$0	\$20	\$70	\$126
Encumbrances	\$0	\$0	\$0	\$0	\$0

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 2014, the fund is used to collect court-ordered fees to be used by the Internet Crimes Against Children program which provides training and equipment for local law enforcement agencies to use in investigating and prosecuting internet crimes against children. Revenues are from court-ordered fees up to \$100 for every defendant for each felony or misdemeanor conviction. Expenditures include costs associated with enabling law enforcement to investigate and prosecute internet crimes against children, including funding to increase the forensic capacity of digital evidence and undercover operations, and to assist groups working directly to combat internet crimes against children.

**Litigation Deposits
Trust Fund
(trust fund)**

Section HRS, 28-16

Financial Data for Fiscal Years 2015 – 2019 (in thousands)

	FY2015	FY2016	FY2017	FY2018	FY2019
Beginning Balance	\$7,131	\$1,286	\$4,736	\$3,064	\$2,034
Revenues	8,628	6,599	0	418	2,995
Interest	39	6	25	12	0
Expenditures*	(14,512)	(3,155)	(1,697)	(1,460)	(991)
Transfers	0	0	0	0	0
Ending Balance	\$1,286	\$4,736	\$3,064	\$2,034	\$4,038
Encumbrances	\$0	\$0	\$0	\$0	\$0

*Expenditures for FY2015 and FY2019 include the following statutorily mandated transfers: \$12,567,785 was transferred to the State Treasury in FY2015; \$5,316 was transferred to Tax Division in FY2019.

This trust fund continues to serve the purpose for which it was created but functions like a trust account. Statutorily established in 2002, the fund is used to account for moneys received through civil actions in which the State is a party where the settlement amount is \$100,000 or higher, except for those actions involving state departments able to procure their own legal services as provided for by Section 28-8.3, HRS, and where no other state statute or court order specifically provides for the deposit of moneys received through the civil action. AG maintains accounting records of fund moneys, including subsidiary records of individual litigation deposits and disbursements. Moneys deposited into the fund pursuant to an order of the court are disbursed in accordance with the order of the court. Expenditures may include attorney's fees and other necessary expenses that the department determines to be reasonable and directly related to prosecution of the civil action for which the account is maintained. Any residual funds remaining in an account are transferred to the respective non-general or general fund in which the civil action is associated. The fund operates like a trust account, because it serves as a separate holding and clearing account for moneys received through civil actions.

**Litigation Settlement
Clearance Account
(trust account)**

**Administratively
established**

Financial Data for Fiscal Years 2015 – 2019 (in thousands)

	FY2015	FY2016	FY2017	FY2018	FY2019
Beginning Balance	\$119	\$120	\$120	\$120	\$120
Revenues	1	0	0	0	1
Interest	0	0	0	0	0
Expenditures	0	0	0	0	0
Transfers	0	0	0	0	0
Ending Balance	\$120	\$120	\$120	\$120	\$121
Encumbrances	\$0	\$0	\$0	\$0	\$0

This fund meets the criteria of a trust account and continues to serve the purpose for which it was originally established. Administratively established in 1985, the fund serves as a clearing account for settlements in litigation cases involving the State and co-defenders. Revenues are from the receipt of asbestos settlements, anti-trust settlements, and other collections made by the department’s Civil Recoveries Division.

**Medicaid Investigations
Recovery Fund
(special fund)**

Section 28-91.5, HRS

Financial Data for Fiscal Years 2015 – 2019 (in thousands)

	FY2015	FY2016	FY2017	FY2018	FY2019
Beginning Balance	\$2,428	\$1,366	\$1,241	\$832	\$729
Revenues	304	369	86	414	326
Interest	0	3	0	2	0
Expenditures*	(1,366)	(497)	(495)	(519)	(621)
Transfers	0	0	0	0	0
Ending Balance	\$1,366	\$1,241	\$832	\$729	\$434
Encumbrances	\$0	\$0	\$5	\$40	\$0

*Expenditures for FY2015 include a transfer of \$1,000,000 to the general fund pursuant to Act 134, SLH 2014.

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 1995, the fund is used to support a portion of the operating expenses of the Medicaid Fraud Control Unit (MFCU) within AG. Revenues are from funds that have been recovered as a result of Medicaid fraud and patient abuse settlements, global case settlements, discovery material copy fees, and interest earned from the revenue deposited in the fund. Expenditures include salaries, rent, supplies, and equipment used by MFCU. MFCU pays 25 percent of its expenses with this fund, while the remaining 75 percent of expenses are paid through the Federal Financial Participation grant.

The department has noted a decline in the settlements received from global case settlements and that this may affect the fund’s ability to cover the entire State’s share of 25 percent of MFCU expenses. The department stated that in the future it may require general fund appropriations to cover a portion of the 25 percent share of expenses. We note that requiring general fund appropriations may jeopardize the fund’s ability to meet special fund criteria which requires, among other things, that a fund demonstrate the capacity to be self-sustaining and that the program cannot be successfully implemented under the general fund appropriation process.

National Mortgage Settlement (trust account)

Administratively established

Financial Data for Fiscal Years 2015 – 2019 (in thousands)

	FY2015	FY2016	FY2017	FY2018	FY2019
Beginning Balance	\$1,325	\$1,066	\$112	\$99	\$66
Revenues	0	0	0	0	0
Interest	4	4	1	1	1
Expenditures	(263)	(958)	(14)	(34)	(1)
Transfers	0	0	0	0	0
Ending Balance	\$1,066	\$112	\$99	\$66	\$66
Encumbrances	\$0	\$0	\$0	\$0	\$0

This trust account continues to serve the purpose for which it was created but functions like a trust fund. Administratively established in 2012, the account is used to hold the national mortgage settlement moneys provided to the State. Moneys were provided pursuant to a consent judgment that was filed in the United States District Court for the District of Columbia on April 4, 2012. The moneys are to be held in trust for the benefit of homeowners and others in the State of Hawai‘i who are, have been, or may be affected by mortgage loan proceedings. The moneys may be used for housing and financial counseling, public education, mediation, dispute resolution, and enforcement of laws and agreements protecting the rights of homeowners and lessees. The account should be reclassified as a trust fund because it does not function merely as a holding or clearing account and instead functions as a trust fund, holding moneys in trust for a designated beneficiary class.

**Notaries Public
Revolving Fund
(revolving fund)**

Section 456-9.5, HRS

Financial Data for Fiscal Years 2015 – 2019 (in thousands)

	FY2015	FY2016	FY2017	FY2018	FY2019
Beginning Balance	\$2	\$8	\$63	\$175	\$253
Revenues	117	202	267	255	269
Interest	0	0	0	0	0
Expenditures	(111)	(147)	(155)	(177)	(182)
Transfers	0	0	0	0	0
Ending Balance	\$8	\$63	\$175	\$253	\$340
Encumbrances	\$0	\$0	\$0	\$0	\$0

This fund continues to serve the purpose for which it was created but functions more like a special fund. Statutorily established in 1998, the fund is used to administer the Hawai'i Notary Program. The purpose of the Hawai'i Notary Program is to issue and renew notary commissions, regulate existing notaries, conduct training for notaries and staff, respond to complaints and inquiries by and regarding notaries, archive notary record books, respond to requests for copies of notary record books, and other activities related to notaries public. Revenues come from proceeds of both new and renewed notary commissions, and from the fees or fines generated by Chapter 456, HRS. Expenditures include salaries for Notary Office staff, in whole or in part, all operating costs of the office, costs of supplies used by the Notary Office, monthly travel to neighbor islands to administer notary exams or conduct training, and other costs associated with activities related to notaries public. The fund does not meet the definition of a revolving fund because the costs of goods and services which are paid for out of the account are not replenished by charges made for the goods and services provided. The fund operates more like a special fund, where funds are set aside by law for a specific object or purpose and should be reclassified as a special fund.

**Seized Funds – Final
Disposition Pending
Account
(trust account)**

**Administratively
established**

Financial Data for Fiscal Years 2015 – 2019 (in thousands)

	FY2015	FY2016	FY2017	FY2018	FY2019
Beginning Balance	\$1,290	\$802	\$476	\$599	\$921
Revenues	533	242	349	846	679
Interest	0	0	0	2	0
Expenditures*	(1,021)	(568)	(226)	(526)	(574)
Transfers	0	0	0	0	0
Ending Balance	\$802	\$476	\$599	\$921	\$1,026
Encumbrances	\$0	\$0	\$0	\$0	\$0

*Expenditures include the following transfers to the Criminal Forfeiture Revolving Fund: \$859,013 for FY2015; \$522,821 for FY2016; \$214,114 for FY2017; \$509,250 for FY2018; and \$553,061 for FY2019.

This account meets the criteria of a trust account and continues to serve the purpose for which it was originally established. Administratively established in 1988, the account is used as a holding account for any funds pending the outcome of forfeiture proceedings. Revenues are from seized moneys. Expenditures include disbursements back to law enforcement and interested parties, and transfers to the Criminal Forfeiture Revolving Fund.

**Solicitation of
Funds for Charitable
Purposes Special Fund
(special fund)**

Section 467B-15, HRS

Financial Data for Fiscal Years 2015 – 2019 (in thousands)

	FY2015	FY2016	FY2017	FY2018	FY2019
Beginning Balance	\$1,292	\$1,422	\$1,814	\$1,697	\$1,877
Revenues	965	1,166	1,228	1,452	1,470
Interest	0	0	0	5	12
Expenditures	(835)	(774)	(1,345)	(1,277)	(1,288)
Transfers	0	0	0	0	0
Ending Balance	\$1,422	\$1,814	\$1,697	\$1,877	\$2,071
Encumbrances	\$99	\$126	\$49	\$176	\$50

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 2005, the fund is used to provide AG with necessary resources to register and oversee the fundraising activities of organizations in the State as mandated by Chapter 467B, HRS. Revenues are from registration fees paid by professional solicitors, and fundraising counsel, annual registrations fees paid by registered charitable organizations,

finances and other penalties assessed and collected by AG, and other costs of investigation and enforcement that are paid through settlements and enforcement actions. Expenditures include staff salaries, office supplies, investigation and litigation related costs, travel and training expenses, and the development, implementation, maintenance and technical support for the State's online registration system and publicly searchable charity registry.

**Temporary Deposit
– Child Support
Enforcement Services
(trust account)**

**Administratively
established**

Financial Data for Fiscal Years 2015 – 2019 (in thousands)

	FY2015	FY2016	FY2017	FY2018	FY2019
Beginning Balance	\$30	\$52	\$274	\$490	\$893
Revenues	1,166	1,638	1,840	1,800	693
Interest	0	0	0	0	0
Expenditures	(1,144)	(1,416)	(1,624)	(1,397)	(1,195)
Transfers	0	0	0	0	0
Ending Balance	\$52	\$274	\$490	\$893	\$391
Encumbrances	\$0	\$0	\$439	\$168	\$0

This account meets the criteria of a trust account and continues to serve the purpose for which it was originally established. Administratively established in 1986, the account is used to hold federal incentive payments for the Child Support Enforcement Services (CSES) and the \$25 annual fees collected from customers. The federal incentive payments are only given if CSES meets the federal performance measures based on a data reliability audit and performance review at the end of each federal fiscal year. The agency uses the funds to supplement operational costs. Expenditures include system software and hardware maintenance, as well as postage.

**Temporary Deposits –
Payroll Overpayment
(trust account)**

**Administratively
established**

Financial Data for Fiscal Years 2015 – 2019 (in thousands)

	FY2015	FY2016	FY2017	FY2018	FY2019
Beginning Balance	\$14	\$13	\$8	\$14	\$14
Revenues	2	1	6	0	0
Interest	0	0	0	0	0
Expenditures	(3)	(6)	0	0	0
Transfers	0	0	0	0	0
Ending Balance	\$13	\$8	\$14	\$14	\$14
Encumbrances	\$0	\$0	\$0	\$0	\$0

This account meets the criteria of a trust account and continues to serve the purpose for which it was originally established. Administratively established in 1997, the account is used to account for semi-monthly employee salary overpayments. According to the department, employees are provided an opportunity to either request a hearing to determine their actual salary overpayment amount or choose a repayment plan option. Revenues are from reimbursements and collections of salary overpayments. Expenditures include moneys returned to the Department of Budget and Finance.

**Tobacco Enforcement
Special Fund
(special fund)**

Section 28-15, HRS

Financial Data for Fiscal Years 2015 – 2019 (in thousands)

	FY2015	FY2016	FY2017	FY2018	FY2019
Beginning Balance	\$3,671	\$1,420	\$2,323	\$3,095	\$2,017
Revenues	2,164	2,200	2,173	2,087	1,924
Interest	0	0	16	15	0
Expenditures*	(4,415)	(1,297)	(1,417)	(3,180)	(3,044)
Transfers	0	0	0	0	0
Ending Balance	\$1,420	\$2,323	\$3,095	\$2,017	\$897
Encumbrances	\$42	\$0	\$51	\$25	\$39

*Section 28-15, HRS, requires any unencumbered fund balances greater than \$500,000 to be transferred to the general fund annually. The required transfers for FY2015 through FY2018, totaling \$1,823,031, are represented within the FY2018 expenditures. The department states that the required transfer for FY2019 of \$723,785 will occur in FY2020.

This fund meets the criteria of a special fund and continues to serve the purpose for which it was originally established. Statutorily established in 2001, the fund is used for administering, operating, monitoring, and

ensuring compliance with and enforcement of the Master Settlement Agreement related to the Tobacco Liability Act, Chapter 675, HRS, the cigarette tax stamp under Chapter 245, HRS, and tobacco products reporting under Chapter 486P, HRS. Revenues are from tobacco settlement moneys as provided by Section 328L-2(a), HRS, the allocated portion of the stamp fee designated to pay for the cost of enforcing the cigarette tax stamp as provided by Section 245-26, HRS, and fines as provided for by Section 245-1, HRS. Expenditures include personnel costs and operational expenses and overhead costs.

Chapter 3

Observations on the Department of the Attorney General's Reporting and Accounting for Funds

As we reported in our *Study of the Transfer of Non-general Funds to the General Fund*, Report No. 12-04, special, revolving, and other types of non-general funds collectively represent about half of the State's operating budget – moneys that are not subject to the same level of legislative scrutiny as the general fund. Accurate and complete reporting of all funds, as required by law, would greatly improve the Legislature's oversight and control of these funds and provide increased budgetary flexibility. Fund reports are one of the primary means through which the Legislature tracks non-general funds. The reports are used to monitor fund balances and identify excess moneys for possible transfer to the general fund.

AG Did Not Report Non-General Funds as Required by Law

Section 37-47, HRS, requires departments to submit to the Legislature an annual report of each non-general fund account, including information such as the intended purpose of the fund, current program activities supported by the fund, and financial data. The Director of Finance annually issues a memorandum requesting all departments to complete and submit Form 37-47, *Report on Non-General Fund Information*, to the Department of Budget and Finance for each of their non-general funds. The Department of Budget and Finance compiles a report of all non-general fund accounts and submits it to the Legislature prior to the start of each legislative session.

Section 37-52.5, HRS, requires the Judiciary and any department that administratively establishes a new fund or account to submit a report to the Legislature. The report must be filed within 30 working days of a fund or account's creation and should include a justification for the fund or account and identification of its sources of revenue. In addition, prior to the start of each legislative session, the law also requires each department to submit to the Legislature a listing of all administratively established funds or accounts along with a statement of their revenues, expenditures, encumbrances, and ending balances for each fund or account. This report is separate and distinct from the non-general fund report required under Section 37-47, HRS.

During our review of AG's non-general funds, we noted noncompliance with statutory requirements to report financial activity and balances, as required by Section 37-47, HRS, as well as fund information for administratively established funds and accounts under Section 37-52.5, HRS.

As shown in Exhibit 3.1, AG had non-general funds with balances totaling \$84,000 and administratively created non-general funds with balances totaling more than \$1 million that were not reported to the 2019 Legislature as required by Sections 37-47 and 37-52.5, HRS, respectively.

**Exhibit 3.1
AG Non-General Funds and Administratively Created Funds Not Reported to the Legislature**

Fund Name	Fund Type	HRS 37-47 (Non-General)	FY2018 Ending Balance (rounded)	HRS 37-52.5 (Admin Created)	FY2018 Ending Balance (rounded)
Criminal Forfeiture Bond Holding Account	Trust Account			✓	\$13,000
Federal Community Restitution	Trust Fund			✓	3,000
Internet Crimes Against Children Special Fund	Special Fund	✓	70,000		
Litigation Settlement Clearance Account	Trust Account			✓	120,000
Temporary Deposit - Child Support Enforcement Services	Trust Account			✓	893,000
Temporary Deposits - Payroll Overpayments	Trust Account	✓	14,000	✓	14,000
Total			\$84,000		\$1,043,000

Source: Office of the Auditor

AG Did Not Consistently Classify Transfers

As part of our review, we request a summary statement reflecting total fund transactions in the preceding five fiscal years, including the fund balance at the beginning of each fiscal year, total deposits and withdrawals, amount of interest earned, total expenditures made from the fund, and the ending balance for each fiscal year.

During our review, we noted that, in some instances, AG did not properly classify transfers in the statewide Financial Accounting and Management Information System (FAMIS). Transactions indicated as transfers in their summary statement and non-general fund report were instead coded as expenditures or revenues in FAMIS. Further, certain transfers were not indicated in the summary statement or FAMIS and were determined only through additional communication with AG. Due to the lack of consistent reporting, we cannot determine whether any additional transfers may be found within expenditures or revenues during our review period.

We recommend that AG consult with DAGS as to the coding of revenues, transfers, and expenditures to ensure that AG's methodology complies with DAGS policy.



Office of the Auditor's Comments on the Department of the Attorney General's Response

Comments on Agency Response

We transmitted to AG a draft of our review of its Special Funds, Revolving Funds, Trust Funds, and Trust Accounts on October 28, 2019. AG provided its written response to the draft report on November 5, 2019 (Attachment 1).

AG disagreed with our analysis of four funds and one trust account. Based on the definitions of the fund types and trust account provided in statute and by the Department of Accounting and General Services, we find AG's position to be unpersuasive. We maintain our analyses of those funds and account were appropriate and correct based upon the information AG provided to us during the review process.

With respect to the Antitrust Trust Fund, AG notes that we have reached the same conclusion – i.e., the fund does not meet the criteria of a trust fund – in every review since 2004. In every instance since 2004, AG has disagreed and asserted in its response that, because it has maintained a consistent position, “the issue has already been decided.” We are statutorily mandated to review each department's funds and accounts; reviews include an assessment whether those funds and accounts meet criteria established by the Legislature. Reviews are independent, objective assessments. Simply disagreeing with our determination that the Antitrust Trust Fund should be reclassified as a special fund does not render the issue “decided.” To be clear, we disagree with AG that the Antitrust Trust Fund meets the criteria of a trust fund; as we reported on page 10, while we have no issue with the purpose of the Antitrust Trust Fund, the fund operates like a special fund and should be reclassified as such.

Section 37-62, Hawai'i Revised Statute (HRS), defines a trust fund as one in which “designated persons or classes of persons have a vested beneficial interest of equitable ownership, or which was created or established by a gift, grant, contribution, devise or bequest that limits the use of the fund to designated objects or purposes.” More plainly, a trust fund holds moneys “in trust” for specific persons or classes of people who have an ownership interest in the moneys. Examples of a trust fund include the State's Employment Retirement System trust fund, which holds employer and employee contributions to fund employee retirement, disability, and survivor benefits for state and county employees, and the Department of Land and Natural Resources' Boating Security Deposits trust fund which holds security deposits from tenants at the Division of Boating and Ocean Recreation's small boat harbors that are returned to tenants when their harbor-use permits are not renewed.

The Antitrust Trust Fund, however, does not meet the statutory criteria of a trust fund. Pursuant to Section 28-13, HRS, ten percent of antitrust judgments or settlements are deposited into the Antitrust Trust Fund for use by AG to enforce antitrust laws, including among other things to fund the State's participation in antitrust lawsuits initiated by other states. However, at the end of each fiscal year, all moneys in excess of \$250,000 are transferred to the State's general fund.

According to AG, because the moneys are used "in the public interest," the department holds a vested beneficial interest of equitable ownership in the moneys. At best, that conclusion requires an unreasonably broad and overly expansive interpretation of a trust fund, as defined in Section 37-62, HRS. Under the statutory definition, a trust fund holds moneys in trust for designated persons or classes of persons. We do not believe that either the State of Hawai'i or AG constitutes "a person or classes of persons" who have an ownership interest in the moneys. Under AG's reasoning, the general fund, which is used by the State to support a multitude of government programs, would be a trust fund because the moneys are used in the public interest. Moreover, the fact that trust fund moneys in excess of \$250,000 are transferred to the general fund at the end of each fiscal year further highlights that AG does not have an ownership interest in the moneys. While we do not dispute the operational significance of this fund in responding to antitrust initiatives, the "importance" of the program supported by the fund is not a criterion in our evaluation of funds.

AG also disagreed with our recommendation to reclassify the National Mortgage Settlement Trust Account to a trust fund. AG does not dispute that, under the statutory criteria, the trust account should be a trust fund, but is unwilling to reclassify it as such because the trust account was established in accordance with a court's settlement order. Our review evaluated whether the appropriate non-general fund or account is being implemented based on statutory criteria and in this case, the National Mortgage Settlement Trust Account should be a trust fund based on its funding source and purpose. In contrast to the Antitrust Trust Fund, the moneys are held "in trust" by the department for the benefit of homeowners and others in the State of Hawai'i. The department should take the steps necessary to ensure that, when a court-ordered fund is established, it is established consistent with legislatively established criteria; AG should seek to amend the Court's order to meet the statutory requirements associated with the specific fund or account.

As to our other observations about the department's failure to submit certain reports to the Legislature and its improper accounting of transfers as expenditures, AG stated that it will take steps to ensure compliance with reporting requirements and provide internal training to properly account for the moneys leaving its funds and accounts.

DAVID Y. IGE
GOVERNOR



CLARE E. CONNORS
ATTORNEY GENERAL

DANA O. VIOLA
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November 5, 2019

The Honorable Leslie H. Kondo
State Auditor
Office of the Auditor
465 South King Street, Room 500
Honolulu, Hawaii 96813

Dear Mr. Kondo:

Re: Review of Special Funds, Revolving Funds, Trust Funds, and Trust
Accounts for the Department of the Attorney General

Thank you for the opportunity to comment on your draft report. We have reviewed the report and respectfully provide the following comments:

Antitrust Trust Fund

The draft report states:

The fund continues to serve the purpose for which it was created but operates more like a special fund; accordingly, Section 28-13, HRS, should be amended to reclassify this fund as a special fund. The fund does not meet the appropriate means of financing criterion for trust funds because there are no designated persons or classes of persons having a vested beneficial interest or equitable ownership in the assets of the fund.

There appears to be a misunderstanding regarding the fund and its role in the law enforcement mission of the Department of the Attorney General. Auditor's Reports No. 04-13 09-11, and 14-13 dated December 2004, December 2009, and November 2014 respectively made a similar finding, and we responded similarly in letters dated December 7, 2004, December 14, 2009, and December 1, 2014. There have been no significant changes to the statute, facts, or circumstances surrounding this issue, and the legislature has not seen fit to change the Antitrust Trust Fund's character. Accordingly, we respectfully suggest that this issue has already been decided, and on multiple occasions.

Mr. Lester Kondo
State Auditor
November 5, 2019
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By statute, the Attorney General is tasked to enforce the criminal and civil provisions of the Hawaii Antitrust Law. Accordingly, the Attorney General is authorized to conduct investigations, *inter alia*, when the Attorney General believes an investigation is in the public interest, and authorized to bring actions on behalf of the State or a county, as well as actions as *parens patriae* on behalf of natural persons *qua* indirect purchasers.

The purpose of the fund is “for expenditures relating to the enforcement of antitrust laws . . .”, Section 28-13(c), Hawaii Revised Statutes. Because of this law enforcement function, the class of persons benefited by the fund can include natural persons, businesses, and state and local government. Moreover, fostering this law enforcement function benefits the economy and the public interest. This fund, therefore, falls within the definition of a trust fund.¹

We also note that at the time the Antitrust Trust Fund was created, the Legislature was aware that the special fund was not functional or appropriate. Antitrust money is needed when antitrust cases arise. There is often little or no warning as to when or how much money will be needed. Accordingly, the Legislature created this trust fund which is capped at \$250,000 to give the Attorney General some funding flexibility over a limited pool of money as needed to respond to antitrust initiatives. We recognize that there is also a general litigation fund. But there is a measure of prosecutorial discretion in deciding whether to take action in antitrust cases based in part on available resources. There is no such discretion in deciding whether to defend the State of Hawaii. If the antitrust cases were forced to compete with all other cases for funding, priority would inevitably be given to those cases in which the State was a defendant rather than a plaintiff.

A second account you questioned as not meeting the definition was the National Mortgage Settlement Trust Account. We wish to note that the court’s settlement order specifically states that the Attorney General, as custodian for the subject monies, shall establish an administrative trust account. We note that a trust fund would require legislative action which is inconsistent with the court order.

You also identified three other funds that in your opinion do not meet the definition of the fund indicated. I have had our counsel review those accounts and we respectfully disagree. We believe they do meet the definition.

¹Even if there was a conflict between sections 28-13 and 37-62, Hawaii Revised Statutes, we note that common rules of statutory interpretation would give precedence to the more specific and more recent provisions of the Antitrust Trust Fund.

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State Auditor
November 5, 2019
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Further, your report indicates that we had failed to submit reports to the legislature, as required, for four trust accounts and one trust fund that at the end of FY2019 had a balance of \$1.0 million. We appreciate your pointing this out and shall establish procedures to assure required reports are issued.

And lastly, you found some instances where we did not properly classify transfers in the statewide Financial Accounting and Management Information system. I have asked that our new Financial Officer develop training for the staff to properly classify transfers versus expenses.

Thank you for your consideration of this letter.

Very truly yours,



☞ Clare E. Connors
Attorney General