



INSPECTOR GENERAL REPORT

2008-01-0002

November 30, 2009

CODE OF ETHICS APPLICATION

Inspector General David O. Thomas and Staff Attorney Todd Shumaker report as follows:

This report involves a recommendation to the Indiana Legislature to consider amending several statutes to clarify the application of the Indiana Code of Ethics (42 IAC 1-5).

The Office of the Inspector General (OIG) is charged to “recommend policies and carry out other activities designed to deter, detect, and eradicate fraud, waste, abuse, mismanagement and misconduct in state government.” IC 4-2-7-3(2). The OIG is also authorized to “recommend legislation to the Governor and General Assembly to strengthen public integrity laws, including the Code of Ethics.” IC 4-2-7-3(9).

With this jurisdiction in mind, the OIG respectfully makes the following findings and recommendation for consideration by the Indiana General Assembly.

I

Findings

A

Public Law 222-2005 created the OIG and contained a provision in IC 4-2-6-1 which for the first time brought bodies corporate and politic, sometimes referred to as “quasi-agencies”, within the jurisdiction of the Code of Ethics, a set of ethics rules delineated by the OIG by its authority in IC 4-2-7-5(a). This definition of an “agency” was also adopted by the OIG in 42 IAC 1-3-2 when promulgating the Code of Ethics.

B

We have discovered through our research, however, that certain statutory language continues to allow certain bodies corporate and politic to decide whether they wish to be under the jurisdiction and rules adopted by the OIG or to adopt a code of ethics for their respective employees. These agencies include:

Indiana Finance Authority, IC 4-4-11-15.1
Indiana Bond Bank, IC 5-1.5-2-10
PERF Board of Trustees, IC 5-10.3-3-7
TRF Board, IC 5-10.4-3-6
Board for Depositories, IC 5-13-12-3.1
Indiana Housing & Community Development Authority, IC 5-20-1-4.1
Ports of Indiana, IC 8-10-1-7.1
Bureau of Motors Vehicle Commission, IC 9-15-2-2.2
Indiana Homeland Security Foundation, IC 10-15-2-11
Indiana Natural Resources Foundation, IC 14-12-1-10.1
Indiana White River State Park Development Commission,
IC 14-13-1-14.5
State Fair Commission, IC 15-13-2-13
State Student Assistance Commission, IC 21-11-9-3
Indiana Grain Indemnity Corporation, IC 26-4-3-10
Indiana Political Subdivision Risk Management Commission,
IC 27-1-29-27.1

C

We find two factors relevant to our recommendation below:

1

These bodies have and continue to operate under the jurisdiction of the OIG and SEC. These entities have completed the ethics training implemented by the OIG and continue to use the services of the OIG and SEC in seeking both informal and formal advice on ethics matters.

2

Some of these statutory provisions have been amended since the passage of Public Law 222 in 2005. However, all of these provisions reference the agency's option to decide whether it "wishes to be under the . . . rules adopted by the *state ethics commission*." (emphasis added). This language predates Public Law 222-2005 at which time the authority to adopt such rules was instituted in the OIG, thereby supporting the notion that these statutes were not meant to be of lasting import after the OIG was created. *See* IC 4-2-7-5.

II

Recommendation

For all the above reasons, the OIG respectfully recommends to the Indiana General Assembly pursuant to IC 4-2-7-3(9) that the individual statutory provisions of the above entities be modified to bring them in compliance with the

provisions of Public 222-2005 as addressed herein.

Dated this 30th day of November, 2009.

A handwritten signature in black ink, appearing to read "David O. Thomas". The signature is written in a cursive style with a horizontal line extending to the right across the signature.

David O. Thomas, Inspector General