



INSPECTOR GENERAL REPORT

2009-04-0068

November 30, 2009

COLLECTION OF ETHICS COMMISSION FINES

Inspector General David O. Thomas reports as follows:

This report addresses a recommendation for consideration by the Indiana General Assembly regarding the collection of unpaid fines imposed by the State Ethics Commission (SEC). The recommendation is that the Office of the Inspector General (OIG) be permitted to directly collect fines issued by the SEC.

The purpose of this recommendation is to streamline the process for the collection of fines imposed by the SEC.

The 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).

The OIG is also charged to investigate and partner with the Office of the Attorney General (AG) when a “financial loss” occurs to the State. IC 4-2-7-6.¹

¹ See footnote 3, post.

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

I

Findings

1

The SEC adjudicates violations of the Code of Ethics after investigations by the OIG. IC 4-2-6-4. At least twenty-seven (27) ethics complaints were adjudicated by the SEC from 2005 through 2008. *See: 2008 OIG Annual Report* online at: <http://www.in.gov/ig/reports.html>.

2

The Inspector General is charged to provide staffing assistance to the SEC. IC 4-2-7-2(a).

3

The OIG is currently authorized to collect an unpaid SEC fee through IC 4-2-7-6 by certifying an unpaid SEC fine to the Attorney General, which procedure authorizes the OIG to eventually proceed through a civil proceeding if there is a financial loss to the State and should the Attorney General elect to decline seeking collection pursuant to IC 4-2-7-6.

4

The Attorney General is charged to collect financial losses for the entire State, often litigating and pursuing claims in amounts far greater than SEC fines.

See e.g. IC 4-6-2-6.²

5

The OIG may be in a more advantageous position to immediately collect these unpaid SEC fees, having recently litigated with the Respondent during the SEC adjudication and having immediate knowledge of the Respondent's location and contact information.

II

For the above reasons, the OIG respectfully requests the Indiana General Assembly to consider enacting legislation which authorizes the OIG to directly collect unpaid SEC fines.

This could include language as an additional sub-paragraph to IC 4-2-7-6 which states: **“The inspector general may directly institute civil proceedings against persons who have failed to pay fines imposed by the State Ethics Commission pursuant to IC 4-2-6-12.”** This proposed language is set forth

² IC 4-6-2-6 **Collection of costs, licenses, money, fines, penalties, or forfeitures; escheats; reports of money due state**

Sec. 6. (a) The attorney general shall ascertain the amounts paid to any person for court costs under IC 33-37, licenses, money unclaimed in estates or guardianships, fines, penalties, or forfeitures, or monies that escheat to the state under IC 29-1-2-1 or from any other source where the money is required to be paid to the state or to any officer in trust for the state. In all cases where an officer required to collect the money fails to do so after the cause of action in favor of the state has accrued, or fails to sue for and recover any property belonging to or which may escheat to the state, the attorney general shall institute all necessary proceedings to compel the payment of the money or recovery of the property. The payment to or collection by the attorney general of any of the funds does not render an officer liable to an action on the officer's bond by any other officer or person.

(b) The officers having the custody of the money shall report to the attorney general, upon oath or affirmation, all facts pertaining to it, upon the attorney general's demand, in person, by deputy or assistants, or in writing.

(c) An officer who fails to render the information upon demand commits a Class C infraction. (Formerly: Acts 1889, c.71, s.9.) As amended by Acts 1977, P.L.2, SEC.3; Acts 1978, P.L.2, SEC.403; P.L.192-1986, SEC.2; P.L.305-1987, SEC.2; P.L.98-2004, SEC.46.

below for consideration.³

Submitted for consideration this 30th day of November, 2009.



David O. Thomas, Inspector General

³ IC 4-2-7-6: Misconduct involving state business; report to attorney general; inspector general's authority to bring civil action

Sec. 6. (a) This section applies if the inspector general finds evidence of misfeasance, malfeasance, nonfeasance, misappropriation, fraud, or other misconduct that has resulted in a financial loss to the state or in an unlawful benefit to an individual in the conduct of state business.

(b) If the inspector general finds evidence described in subsection (a), the inspector general shall certify a report of the matter to the attorney general and provide the attorney general with any relevant documents, transcripts, or written statements. Not later than one hundred eighty (180) days after receipt of the report from the inspector general, the attorney general shall do one (1) of the following....

(1) File a civil action (including an action upon a state officer's official bond) to secure for the state the recovery of funds misappropriated, diverted, missing, or unlawfully gained. Upon request of the attorney general, the inspector general shall assist the attorney general in the investigation, preparation, and prosecution of the civil action.

(2) Inform the inspector general that the attorney general does not intend to file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained. If the attorney general elects not to file a civil action, the attorney general shall return to the inspector general all documents and files initially provided by the inspector general.

(3) Inform the inspector general that the attorney general is diligently investigating the matter and after further investigation may file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained. However, if more than three hundred sixty-five (365) days have passed since the inspector general certified the report to the attorney general, the attorney general loses the authority to file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained and shall return to the inspector general all documents and files initially provided by the inspector general.

(c) If the inspector general has found evidence described in subsection (a) and reported to the attorney general under subsection (b) and:

(1) the attorney general has elected under subsection (b)(2) not to file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained; or

(2) under subsection (b)(3) more than three hundred sixty-five (365) days have passed since the inspector general certified the report to the attorney general under subsection (b) and the attorney general has not filed a civil action;

the inspector general may file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained.

(d) If the inspector general has found evidence described in subsection (a), the inspector general may institute forfeiture proceedings under IC 34-24-2 in a court having jurisdiction in a county where property derived from or realized through the misappropriation, diversion, disappearance, or unlawful gain of state funds may be located, unless a prosecuting attorney has already instituted forfeiture proceedings against that property.

(e) The inspector general may directly institute civil proceedings against persons who have failed to pay fines imposed by the state ethics commission pursuant to IC 4-2-6-12.