

STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2765

AUDIT REPORT
OF

PROBATION DEPARTMENT
CITY OF HAMMOND
LAKE COUNTY, INDIANA

January 1, 2005 to December 31, 2005



FILED
08/10/2006

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CITY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Judge	Hon. Jeffrey A. Harkin	01-01-04 to 12-31-07
Chief Probation Officer	Melanie Golumbeck	01-01-05 to 12-31-06
Mayor	Thomas McDermott, Jr.	01-01-04 to 12-31-07
Controller	Barbara Cardwell	01-01-05 to 12-31-06
President of the Common Council	Daniel Repay Alfonso Salinas	01-01-05 to 12-31-05 01-01-06 to 12-31-06
President of the Board of Public Works and Safety	William J. O'Connor	01-01-05 to 12-31-06



STATE OF INDIANA
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TO: THE OFFICIALS OF CITY OF HAMMOND

We have audited the records of the Probation Department for the period from January 1, 2005 to December 31, 2005, and certify that the records and accountability for cash and other assets are satisfactory to the best of our knowledge and belief, except as stated in the Audit Results and Comments. The financial transactions of this office are reflected in the Annual Report of City of Hammond for the year 2005.

STATE BOARD OF ACCOUNTS

May 9, 2006

PROBATION DEPARTMENT
CITY OF HAMMOND
AUDIT RESULTS AND COMMENTS

DEFERRAL PROGRAM FEES WAIVED TO CHARGE PROBATION USER FEES

Prior to August 26, 2005, defendants entering into an agreement with prosecutors to avoid prosecution were being charged deferral program fees and were also being charged the probation user fees. This practice was discontinued as of August 26, 2005, when defendants began complaining about the practice, and the laws were reviewed by Officials. In January 2006, the Judge began waiving the deferral program fees in order to charge defendants the probation user fees. When a defendant enters a pretrial diversion program, they enter into the agreement with the Prosecutor, not with the Court, and the fees are collected by the City Clerk. Probation user fees require the defendant to plead guilty to an offense, and enter into an agreement with the Court. Court costs and fines are paid to the City Clerk, and probation user fees are paid to the probation department.

Indiana Code 33-39-1-8 (c) states: "A prosecuting attorney may withhold prosecution against an accused person if:

- (1) the person is charged with a misdemeanor;
- (2) the person agrees to conditions of a pretrial diversion program offered by the prosecuting attorney;
- (3) the terms of the agreement are recorded in an instrument signed by the person and the prosecuting attorney and filed in the court in which the charge is pending; and
- (4) the prosecuting attorney electronically transmits information required by the prosecuting attorneys council concerning the withheld prosecution to the prosecuting attorneys council, in a manner and format designated by the prosecuting attorneys council."

Indiana Code 33-39-1-8 (d) states: "An agreement under subsection (c) may include conditions that the person:

- (1) pay to the clerk of the court an initial user's fee and monthly user's fees in the amounts specified in IC 33-37-4-1;"

Indiana Code 35-48-4-12 states: "If a person who has no prior conviction of an offense under this article or under a law of another jurisdiction relating to controlled substances pleads guilty to possession of marijuana or hashish as a Class A misdemeanor, the court, without entering a judgment of conviction and with the consent of the person, may defer further proceedings and place him in the custody of the court under such conditions as the court determines. Upon violation of a condition of the custody, the court may enter a judgment of conviction. However, if the person fulfills the conditions of the custody, the court shall dismiss the charges against him. There may be only one (1) dismissal under this section with respect to a person."

COMMUNITY SERVICE IN LIEU OF PAYING FEES

The Judge allows defendants to perform community service in lieu of paying probation user fees, administrative costs, and drug testing fees. The defendants performing such services are given credit at a rate of \$8.00 per hour. Each Probation Officer calculates the number of hours required to be performed based on the balance due. In testing some of these cases, we found that the number of hours of community service multiplied by the rate did not agree to the balances of fees due.

PROBATION DEPARTMENT
CITY OF HAMMOND
AUDIT RESULTS AND COMMENTS
(Continued)

If a defendant is ordered to perform community service, he or she can also enter into an agreement where by he or she pays the Court, in lieu of performing community service. Again, this is at the rate of \$8.00 per hour. However, we did not find any instances of this occurring during our audit period.

We are unaware of any statutory authority for community service to be performed in lieu of paying fees, nor can we find authority for a defendant to pay fees in lieu of performing community service, when sentenced by the court to do so.

Indiana Code 35-38-2-1 (e) states: "In addition to any other conditions of probation, the court may order each person convicted of a misdemeanor to pay:

- (1) not more than a fifty dollar (\$50) initial probation user's fee;
- (2) a monthly probation user's fee of not less than ten dollars (\$10) nor more than twenty dollars (\$20) for each month that the person remains on probation;
- (3) the costs of the laboratory test or series of tests to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV) if such tests are required by the court under section 2.3 of this chapter; and
- (4) an administrative fee of fifty dollars (\$50); to either the probation department or the clerk."

Indiana Code 35-38-2-1.7 states:

"(c) An order to pay a probation user's fee under section 1 or 1.5 of this chapter:

- (1) is a judgment lien that:
 - (A) attaches to the property of the person subject to the order;
 - (B) may be perfected;
 - (C) may be enforced to satisfy any payment that is delinquent under section 1 or 1.5 of this chapter; and
 - (D) expires; in the same manner as a judgment lien created in a civil proceeding;
- (2) is not discharged by the completion of the person's probationary period or other sentence imposed on the person; and
- (3) is not discharged by the liquidation of a person's estate by a receiver under IC 32-30-5.

(d) If a court orders a person to pay a probation user's fee under section 1 or 1.5 of this chapter, the court may garnish the wages, salary, and other income earned by the person to enforce the order.

PROBATION DEPARTMENT
CITY OF HAMMOND
AUDIT RESULTS AND COMMENTS
(Continued)

(e) If:

- (1) a person is delinquent in paying the person's probation user's fees required under section 1 or 1.5 of this chapter; and
- (2) the person's driver's license or permit has been suspended or revoked or the person has never been issued a driver's license or permit; the court may order the bureau of motor vehicles to not issue a driver's license or permit to the person until the person has paid the person's delinquent probation user's fees."

TOBACCO EDUCATION FEES

Under age smokers are charged a tobacco education fee by the Court, which is collected and remitted to the Controller. The fee is to cover the cost of a probation office providing a tobacco education course, which the juvenile is sentenced to attend. We are unaware of a statutory authority that allows the provision of such a course or fee.

Indiana Code 36-1-3-8 states in part: "(b) a unit does not have the following: (1) the power to prescribe a penalty for conduct constituting a crime or infraction under statute".

TRAFFIC SCHOOL

Defendants convicted of various moving traffic violations can be sentenced to attend Traffic School. The Traffic School used is called Northwest Indiana Traffic School which is run by a City police officer. A fee in the amount of \$75 is charged by the Traffic School, with \$40 of that amount being returned to the City for deposit in the General Fund. Such defendants, as long as they complete the course, do not pay any court costs or deferral fees.

Indiana Code 36-1-6-3 (c) states: "An ordinance defining a moving traffic violation may not be enforced under IC 33-36 and must be enforced in accordance with IC 34-28-5."

Indiana Code 34-28-5-5 states: (a) A defendant against whom a judgment is entered is liable for costs. Costs are part of the judgment and may not be suspended except under IC 9-30-3-12.

Indiana Code 9-30-3-12 (d) states: "Notwithstanding IC 33-37-4-2, any court may suspend one-half (1/2) of each applicable court cost for which a person is liable due to a traffic violation if the person enrolls in and completes a defensive driving school or a similar school conducted by an agency of the state or local government."

Indiana Code 9-30-3-16 states in part:

"(a) If a person has been found to have committed a traffic offense, the court may do the following:

- (1) Require the person to attend and satisfactorily complete a driver improvement course that has been approved by the court and the bureau or by the bureau.

PROBATION DEPARTMENT
CITY OF HAMMOND
AUDIT RESULTS AND COMMENTS
(Continued)

OLD OUTSTANDING CHECKS (WARRANTS)

Our review of the bank reconcilements as of December 31, 2005, revealed checks outstanding in excess of two years.

Indiana Code 5-11-10.5-2 states in part: "All warrants or checks drawn upon public funds of a political subdivision that are outstanding and unpaid for a period of two (2) or more years as of the last day of December of each year are void."

Indiana Code 5-11-10.5-3 states in part: "Not later than March 1 of each year, the treasurer of each political subdivision shall prepare or cause to be prepared a list in triplicate of all warrants or checks that have been outstanding for a period of two (2) or more years as of December 31 of the preceding year. The original copy of each list shall be filed with the board of finance of the political subdivision or the fiscal body of a city or town. The duplicate copy shall be transmitted to the disbursing officer of the political subdivision. The triplicate copy of each list shall be filed in the office of the treasurer of the political subdivision. If the treasurer serves also as the disbursing officer of the political subdivision, only two (2) copies of each list need be prepared or caused to be prepared by the treasurer."

PROBATION DEPARTMENT
CITY OF HAMMOND
EXIT CONFERENCE

The contents of this report were discussed on May 9, 2006, with Hon. Jeffrey A. Harkin, Judge; and Melanie Golumbeck, Chief Probation Officer. The official response has been made a part of this report and may be found on pages 9 and 10.



Court 219-853-6389
Probation 219-853-6410

JEFFREY A. HARKIN, JUDGE
Hammond City Court

May 17, 2006

State Board of Accounts
302 West Washington Street
Room E 418
Indianapolis, IN 46204-2738

RE: OFFICIAL RESPONSE

To Whom It May Concern:

Following constitutes the official response to the City of Hammond Probation Department Audit Results and Comments.

1. Deferral Program Fees Waived To Charge Probation User Fees

The Lake County Prosecutor's Office has never advised this court that they have any type of pretrial diversion program in place to satisfy the terms and conditions of deferrals in this court. We will contact the Prosecutor and implement the supervision of these cases by their personnel and staff.

2. Community Service in Lieu of Paying Fees

"Making indigency determinations is something that courts frequently do, with respect to whether a defendant is entitled to a public defender or whether he or she may be incarcerated for failure to pay court costs, fees, or a fine associated with a criminal conviction. It should be no great burden for a court to make such indigency determinations in pretrial diversion cases, should a prosecutor not exercise his or her discretion independently to waive payment of any or all fees without court involvement. If a defendant is found to be unable to pay the fee, either by a prosecutor acting alone or upon a court's determination, he or she must be offered an alternative to full payment of the fee. This could take the form of complete waiver of the fee, partial waiver, implementation of a reasonable payment schedule, replacement of the fee with a non-financial (but reasonable) requirement such as community service [emphasis added], or some combination of partial waiver and a non-financial requirement. Jamie Mueller et al v. State of Indiana, 49A02-0503-CR-172, Court of Appeals of Indiana, November 16, 2005.

5925 Calumet Avenue Hammond, Indiana 46320

3. Tobacco Education Class

This class is for juveniles ticketed for possession of tobacco. These juveniles do not have the wherewithal to pay a fine and court costs, so this program is a reasonable replacement with the requirement to attend this class about the dangers of tobacco.

4. Traffic School

I believe the error here is that there is no conviction if the respondent attends the traffic school. Therefore there would be no court costs due upon completion of the class.

5. Old Outstanding Checks (Warrants)

The procedure in place was that recommended during the 2003 SBA audit. Procedures will be adjusted to reflect the change of recommendation by the present audit staff.

Very truly yours,



Jeffrey A. Harkin
Hammond City Judge