

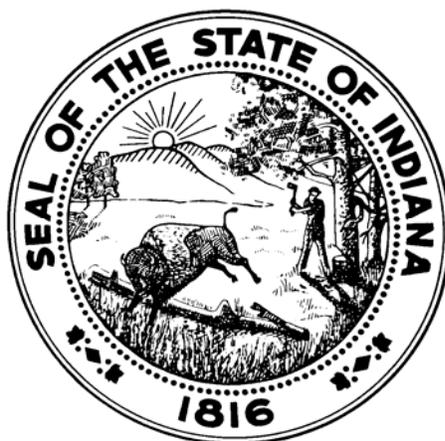
STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2765

SPECIAL REPORT
OF

THE BOARD OF PUBLIC WORKS AND SAFETY
CONTRACTS FOR MOWING THE PROPERTY OWNED
BY THE C&NC RAILROAD CORPORATION AND
THE CITY CEMETERY

CITY OF CONNERSVILLE
FAYETTE COUNTY, INDIANA

January 1, 2005 to May 31, 2006



FILED
09/19/2006

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CITY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Clerk-Treasurer	Julie A. Greeson	01-01-05 to 12-31-07
President of the City Council	Mark Brockman	01-01-05 to 12-31-06
President of the Board of Public Works and Safety	Max Ellison	01-01-05 to 12-31-07



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TO: THE OFFICIALS OF THE CITY OF CONNERSVILLE, FAYETTE COUNTY

We have made reasonable tests and inquires of the transactions related to the Board of Works and Safety contracts regarding mowing of the property belonging to the C&NC Railroad Corporation and the city cemetery, pursuant to a taxpayer petition filed under provisions of Indiana Code 5-11-6-1. The scope of our examination was limited to the questions contained in the petition. Our findings are based on files and records provided by the Clerk-Treasurer's Office and the Mayor's Office. We did not perform an audit in accordance with generally accepted auditing standards or the standards applicable to financial and performance audits contained in Government Auditing Standards issued by the Comptroller General of the United States.

The results of our tests and inquiries are contained in the attached comments. Due to the nature of the report, we have restated the questions raised in the taxpayer petition followed by the State Board of Accounts comments relating to those questions.

STATE BOARD OF ACCOUNTS

July 31, 2006

THE BOARD OF PUBLIC WORKS AND SAFETY CONTRACTS FOR MOWING THE PROPERTY
OWNED BY THE C&NC RAILROAD CORPORATION AND THE CITY CEMETERY
CITY OF CONNERSVILLE
PETITION QUESTIONS AND COMMENTS

PETITION QUESTIONS NO. 1 and 2:

Does the city contract, entered into on April 26, 2005, with C&NC Railroad comply with Indiana statutes and is it legal for the City to use city employees, fuel and equipment for the maintenance of private property?

State Board Of Accounts Comments:

On September 29, 1993, under the administration of Mayor, Marion Newhouse, the City entered into a verbal contract with the C&NC Railroad Corporation. In this contract, the City agreed to mow land belonging to the Railroad bordering Western Avenue in exchange for the Railroad agreeing to allow the Kiwanis Club to plant trees along the area as part of the City's beautification program. The Kiwanis Club planted 41 trees in 1993 as part of a beautification project funded by a grant. On April 26, 2005, the City and the Railroad formalized their agreement in writing.

The current City Attorney stated, in his written opinion to the State Board of Accounts, that he believes the City is not in violation of any statutes in regards to the mowing of this property. He believes the Letter of Agreement, dated April 26, 2005, is a binding contract and is enforceable at law. The mowing of this property along a main artery of the City is for the good of the City not only for the aesthetic value but also for the promotion of economic development of the City. In his opinion, there is consideration running from each party to the other.

In an attempt to address concerns raised by the petitioners, on April 24, 2006, the City leased the property in question from the C&NC Railroad Corporation for \$100 per year, giving the City unquestionable rights to mow and maintain it.

Generally, public funds may not be used to make improvements to property not owned by the governmental unit, unless permitted by statute, federal or state requirements, or safety concerns. However, since this arrangement made was part of a grant agreement to beautify the City, it appears that this situation meets the criteria for the exception.

THE BOARD OF PUBLIC WORKS AND SAFETY CONTRACTS FOR MOWING THE PROPERTY
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CITY OF CONNERSVILLE
PETITION QUESTIONS AND COMMENTS
(Continued)

Indiana Code 36-7-2-7 states that, "A unit may promote economic development and tourism." This statute does not preclude the City from maintaining the main arteries for aesthetic reasons if the City has determined that in doing so it is promoting economic development.

PETITION QUESTION NO. 3:

Is the City in compliance with its Ordinance No. 4344 regarding nuisances as it relates to the mowing of railroad property?

State Board Of Accounts Comments:

The City is maintaining the property owned by the Railroad in accordance with the contract between the City and the Railroad, not as a response to the railroad's failure to mow its property. Therefore, Ordinance No. 4344 does not apply to this situation.

PETITION QUESTION NO. 4:

Is it legal for the City to contract the mowing of the City Cemetery?

State Board Of Accounts Comments:

We reviewed the contract the City entered into to provide mowing and maintenance of the City Cemetery. The contract complies with Indiana statutes.

Indiana Code 36-1-4-7 states, "A unit may enter into contracts."

THE BOARD OF PUBLIC WORKS AND SAFETY CONTRACTS FOR MOWING THE PROPERTY
OWNED BY THE C&NC RAILROAD CORPORATION AND THE CITY CEMETERY
CITY OF CONNERSVILLE
EXIT CONFERENCE

The contents of this report were discussed on July 31, 2006, with Max Ellison, Mayor; and Julie A. Greeson, Clerk-Treasurer. The officials concurred with our audit findings.