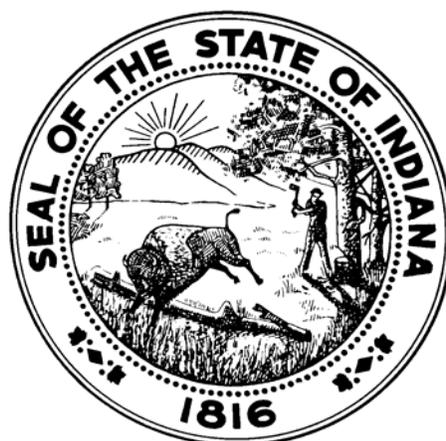


STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2769

SPECIAL REPORT
OF

CITY ATTORNEY'S EMPLOYMENT CONTRACT
CITY OF JEFFERSONVILLE
CLARK COUNTY, INDIANA

January 1, 2005 to December 31, 2005



FILED
01/08/2007

TABLE OF CONTENTS

<u>Description</u>	<u>Page</u>
Officials	2
Transmittal Letter	3
Petition Questions and Comments:	
City Attorney Documentation of Hours Worked	4
City Attorney Compensation Amount and Approval	4-5
Legal Fees for Tax Increment Revenue Bonds	5
Billing Documentation for Bond Issue Legal Services	5-6
Payment of Legal Services From City Funds	6
Exit Conference	7

OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
City Attorney	Les D. Merkley	01-01-05 to 12-31-06
Mayor	Robert L. Waiz, Jr.	01-01-04 to 12-31-07
President of the City Council	Ron Grooms Barbara Wilson	01-01-05 to 12-31-05 01-01-06 to 12-31-06
Clerk-Treasurer	Peggy Wilder	01-01-04 to 12-31-07



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TO: THE OFFICIALS OF THE CITY OF JEFFERSONVILLE, CLARK COUNTY, INDIANA

We have made reasonable tests and inquiries of transactions related to the City Attorney's Employment Contract for the period January 1, 2005 to December 31, 2005, pursuant to a taxpayer petition filed under provisions of Indiana Code 5-11-6-1. The scope of our examination was limited to questions contained in the petition and related information obtained when making our tests and inquiries.

The results of our tests and inquiries are contained in the attached comments.

STATE BOARD OF ACCOUNTS

November 20, 2006

CITY ATTORNEY'S EMPLOYMENT CONTRACT
CITY OF JEFFERSONVILLE
PETITION QUESTIONS AND COMMENTS

CITY ATTORNEY DOCUMENTATION OF HOURS WORKED

The petition questioned whether the City Attorney documented the hours he worked for the fixed salary he receives for the 20 hours per week stated in the Employment Contracts.

Auditor's Comments:

1. The Employment Contract, effective January 1, 2004, between the City (signed by Robert L. Waiz, Jr., Mayor) and Les D. Merkley, Attorney at Law, provides for Mr. Merkley to be paid a salary of \$45,000 per year to attend Board meetings, research legal issues and render legal opinions, and draft legal documents including ordinances and resolutions as necessary. Section 8 of the Employment Contract states: "It is anticipated that Merkley will donate on average approximately twenty hours per week for the legal work described herein."
2. Mr. Merkley stated that the amount he receives for the above salary is for the duties enumerated in the Employment Contract and not for specific hours.
3. Mr. Robert L. Waiz, Jr., Mayor, stated that it was his understanding that the salary paid to Mr. Merkley was for duties enumerated in the Employment Contract and not for specific hours.

Auditor's Conclusion:

It is our audit position, based on the wording of Section 8 of the Employment Contract and statements made by Mr. Merkley and Mr. Waiz, Jr., that the City Attorney is not required by the Employment Contract to document his hours worked for which he is paid a fixed salary.

CITY ATTORNEY COMPENSATION AMOUNT AND APPROVAL

The petition questions whether the \$200 per hour that the City Attorney received for bond issue related legal services was in excess the \$100 per hour authorized in the Employment Contract. The petition also questions whether these payments should have been approved by the City Council as part of their statutory duties to approve salaries.

Auditor's Comments:

1. Section 9 of the Employment Contract provides for Mr. Merkley to be paid at the rate of \$100 per hour for legal services involving litigation, negotiations, planning and zoning, and redevelopment. It is the practice of the City to pay Mr. Merkley for these services by way of the City's payroll and this rate of pay is included in the salary ordinance approved by the City Council.
2. Section 10 of an Employment Contract effective January 1, 2004, between the City and Les D. Merkley provides for Mr. Merkley to be paid pursuant to the reasonable and customary compensatory schedule for bond issue related legal services. The practice is for Mr. Merkley to bill for these services as an independent contractor. The rate of pay is not included in the salary ordinance approved by the City Council.
3. The contract does not specify a fee. Mr. Merkley stated that the hourly fee is based on the normal hourly rate established and charged by his law firm as well as surrounding law firms for most legal services.

CITY ATTORNEY'S EMPLOYMENT CONTRACT
CITY OF JEFFERSONVILLE
PETITION QUESTIONS AND COMMENTS
(Continued)

Auditor's Conclusion:

1. Since the Employment Contract refers to a customary compensatory schedule in Section 10, it is our position that a different fee arrangement for legal services on bond issues was contemplated and agreed upon. It is our position that the rate of \$100 per hour rate specified in Section 9 is not applicable to legal services related to bond issues and would not require approval of the City Council since Mr. Merkley was paid as an independent contractor rather than as an employee for these services.
2. It is also our position that a specific fee arrangement for legal work on bond issues should have been documented and made a part of the Employment Contract.

LEGAL FEES FOR TAX INCREMENT REVENUE BONDS

In a letter accompanying the petition, a petitioner states in part the following:

"I feel Mr. Merkley should not have been paid \$15,000 for City Hall. It is not a revenue producing utility or a non-governmental function. As the State Board of Accounts states: 'There is no statutory authority for the city attorney to receive additional compensation for services rendered in connection with the issuance of general obligation bonds.'"

Auditor's Comments:

The bond issue related to legal services performed by Mr. Merkley for the renovation of a building for the City Hall were issued by the City's Redevelopment Commission. The bonds were Tax Increment Revenue Bonds, Series A issued under the authority of Indiana Code 36-7-14-25.1.

Indiana Code 36-7-14-25.1(i) states in part: "The bonds are not a corporate obligation of the unit but are an indebtedness of the taxing district. . . ."

Auditor's Conclusion:

Based on Indiana Code 36-7-14-25.1(i), the bond issue for the renovation of City Hall was not a general obligation bond and Mr. Merkley is entitled to compensation in accordance with Section 10 of the Employment Contract.

BILLING DOCUMENTATION FOR BOND ISSUE LEGAL SERVICES

The following came to our attention during the course of our audit of transactions related to the City Attorney's compensation for bond issue related legal services:

The City Attorney submitted invoices totaling \$1,375 to the City for legal services related to bond issues. The City paid the amounts by way of payroll at the rate of \$100 per hour.

Our review of invoices submitted by the City Attorney as an independent contractor for bond issue related legal services beginning December 1, 2004, showed they were summary billings for a month's service with a summary description of the services performed. No specific dates were listed on the invoice. Without this information, we were unable to determine if the amounts billed to the City by way of payroll may have been included in the amount billed by Mr. Merkley as an independent contractor.

CITY ATTORNEY'S EMPLOYMENT CONTRACT
CITY OF JEFFERSONVILLE
PETITION QUESTIONS AND COMMENTS
(Continued)

Auditors Comments:

We requested Mr. Merkley to provide us an itemization of services by date similar to the methodology he used to bill the City for various legal services that is paid by way of the City payroll. Mr. Merkley stated the following:

1. Information by specific dates is not available. The amount billed for legal services as an independent contractor related to revenue bond issues was based on estimated time. The billings I submitted and was paid by way of the City payroll were not included in the amount I billed as an independent contractor.
2. The amount billed to the City at the rate of \$100 per hour was in error and should have billed at the rate of \$200 per hour under Section 10 of the contract. I decided not to correct the billing since I had already billed the City and the error was in the City's favor.

Auditor Conclusion:

If the agreement between the City and Mr. Merkley requires compensation to be based on a fee per hour basis for bond issue related legal services, it is our position that billings should be based on actual hours worked and supporting documentation should be available to show the dates when the service was performed and description of the work performed.

Indiana Code 5-11-10-1.6 states in part:

"(b) As used in this section, 'claim' means a bill or an invoice submitted to a governmental entity for goods or services."

"(c) The fiscal officer of a governmental entity may not draw a warrant or check for payment of a claim unless:

- (1) there is a fully itemized invoice or bill for the claim . . ."

PAYMENT OF LEGAL SERVICES FROM CITY FUNDS

The following came to our attention during the course of our audit of transactions related to the City Attorney's compensation:

It is the practice of the City to pay 50% of legal services billed by Mr. Merkley from the Wastewater Operating Fund and 50% from the City's General Fund. During 2005, we found \$5,475 of legal services billed for redevelopment commission, zoning, and parks, etc., that was paid from the Wastewater Operating Fund.

Auditor Conclusion:

The above expenditures should be paid from either the General Fund or other appropriate funds of the City.

Sources and uses of funds should be limited to those authorized by the enabling statute, ordinance, resolution, or grant agreement. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

CITY ATTORNEY'S EMPLOYMENT CONTRACT
CITY OF JEFFERSONVILLE
EXIT CONFERENCE

The contents of this report were discussed on November 20, 2006, with Robert L. Waiz, Jr., Mayor; Les D. Merkle, City Attorney; and Peggy Wilder, Clerk-Treasurer. The officials concurred with our findings.