

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

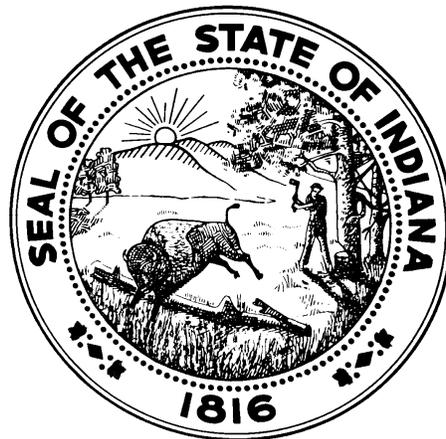
AUDIT REPORT

OF

COUNTY SHERIFF

VERMILLION COUNTY, INDIANA

January 1, 2007 to December 31, 2007



FILED

09/30/2008

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COUNTY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Sheriff	Robert Spence	01-01-07 to 12-31-10
President of the County Council	John Yoho	01-01-07 to 06-06-08
	Vacant	06-07-08 to 07-13-08
	John Cheesewright	07-14-08 to 12-31-08
President of the Board of County Commissioners	Tim J. Wilson	01-01-07 to 12-31-08



STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

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TO: THE OFFICIALS OF VERMILLION COUNTY

We have audited the records of the County Sheriff for the period from January 1, 2007 to December 31, 2007, 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 Vermillion County for the year 2007.

STATE BOARD OF ACCOUNTS

August 11, 2008

COUNTY SHERIFF
VERMILLION COUNTY
AUDIT RESULTS AND COMMENTS

PERSONAL EXPENSES

Payments were made from the Sheriff's Commissary Fund to two attorneys for services rendered to the former and current sheriffs in conjunction with a special prosecuting attorney's investigation into the proper reporting of income earned by County Sheriff's Department employees for private security services performed in Louisiana (after hurricane Katrina) and in Indiana as follows:

1. January 29, 2007, payment to Michael K. Sutherlin and Associates, "Consultation with Kim Hawkins, Rhonda Hawkins, and Bob Spence." (\$800)
2. January 29, 2007, payment to Katz and Korin, PC, billed to Kim Hawkins, "Duke Energy Matter." (\$1,410)

Robert Spence, current Sheriff, reimbursed the Sheriff's Commissary Fund in the amount of \$400 on January 29, 2008. This amount represents fifty percent of the payment made to Michael K. Sutherlin and Associates. (See Summary, page 15)

Kim H. Hawkins, former Sheriff, was requested to reimburse the remaining \$1,810 to the Sheriff's Commissary Fund. (See Summary, page 15)

Public funds may not be used to pay for personal items or for expenses which do not relate to the functions and purposes of the governmental unit. Any personal expenses paid by the governmental entity may be the personal obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

SUPPORTING DOCUMENTATION

All VISA and Wal-Mart account charges were examined for 2007. Seventy-seven out of one hundred and twenty-four VISA charges, and fifty-eight out of ninety-four Wal-Mart charges were observed which did not contain adequate supporting documentation, such as receipts, invoices, and other public records. Due to the lack of supporting information, the validity and accountability for some money disbursed could not be established.

Supporting documentation such as receipts, canceled checks, tickets, invoices, bills, contracts, and other public records must be available for audit to provide supporting information for the validity and accountability of monies disbursed. Payments without supporting documentation may be the personal obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

PENALTIES, INTEREST, AND OTHER CHARGES

Bank service charges in the amount of \$80 were paid out of the Sheriff's Evidence Fund bank account in 2007. Finance charges and late fees totaling \$151 were paid to VISA out of the Sheriff's Commissary Fund in 2007.

Officials and employees have the duty to pay claims and remit taxes in a timely fashion. Failure to pay claims or remit taxes in a timely manner could be an indicator of serious financial problems which should be investigated by the governmental unit.

COUNTY SHERIFF
VERMILLION COUNTY
AUDIT RESULTS AND COMMENTS
(Continued)

Additionally, officials and employees have a responsibility to perform duties in a manner which would not result in any unreasonable fees being assessed against the governmental unit.

Any penalties, interest or other charges paid by the governmental unit may be the personal obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

APPOINTMENT OF SPECIAL DEPUTIES

During 2007 and 2008, the Sheriff appointed approximately 29 people, including many spouses of Sheriff Department employees, as special deputies. The special deputies are not paid for any services rendered as a "special deputy," however; many have had conference fees and associated travel expenses paid. Several of the persons appointed are employed in a capacity elsewhere that would not require them to have the powers of a law enforcement officer (i.e. full-time school teacher, businessman, automotive mechanic/auto body technician). Further, there is no indication that the County fiscal body (County Council) had created the number of special deputy positions that have been appointed.

Indiana Code 36-8-10-10.6(a) states that: "[t]he sheriff may appoint as a special deputy any person who is employed by a governmental entity as defined in IC 35-41-1 or private employer, the nature of which employment necessitates that the person have the powers of a law enforcement officer . . ."

Indiana Code 36-2-16-4, states in part that: "each of the following county officers is entitled to appoint one (1) first or chief deputy, and also may appoint the number of other full-time or part-time deputies and employees authorized by the county fiscal body: . . . (5) The county sheriff."

OLD OUTSTANDING CHECKS (WARRANTS)

Our review of the Sheriff Inmate Trust bank reconciliation as of December 31, 2007, revealed warrants 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."

COUNTY SHERIFF
VERMILLION COUNTY
AUDIT RESULTS AND COMMENTS
(Continued)

Indiana Code 5-11-10.5-5 states:

"(a) Upon the preparation and transmission of the copies of the list of the outstanding warrants or checks, the treasurer of the political subdivision shall enter the amounts so listed as a receipt into the fund or funds from which they were originally drawn and shall also remove the warrants or checks from the record of outstanding warrants or checks.

(b) If the disbursing officer does not serve also as treasurer of the political subdivision, the disbursing officer shall also enter the amounts so listed as a receipt into the fund or funds from which the warrants or checks were originally drawn. If the fund from which the warrant or check was originally drawn is not in existence, or cannot be ascertained, the amount of the outstanding warrant or check shall be receipted into the general fund of the political subdivision."

OFFICIAL BONDS

Kim H. Hawkins, former Sheriff obtained official bond coverage from the Ohio Casualty Group. A \$15,000 bond covered the elected term of January 1, 2003 to December 31, 2006.

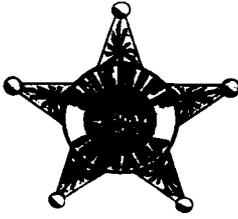
Robert Spence, Sheriff obtained official bond coverage from the Ohio Casualty Group. A \$15,000 bond covered the elected term of January 1, 2007 to December 31, 2010.

Indiana Code 5-4-1-5.1(b) states in part:

"Every elected or appointed officer, official, deputy, or employee of a political subdivision . . . shall file the bond in the office of the county recorder. . . ."

COUNTY SHERIFF
VERMILLION COUNTY
EXIT CONFERENCE

The contents of this report were discussed on August 19, 2008, with Robert Spence, Sheriff; Kim H. Hawkins, former Sheriff; John Cheesewright, President of the County Council; and Tim J. Wilson, President of the Board of County Commissioners. The official responses have been made a part of this report and may be found on pages 8 through 14.



Robert J. Spence

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This memo is in reference to the recent audit from the State Board of Accounts (SBOA) with the primary focus on the positions of Assistant Matron and Special Deputies. I want to state my position on the issue. I feel whatever money was spent on education and or conferences were valid. However, I will see that all educational fees are paid back, and from this date forward said persons will not be attending any schooling, seminars, or conferences with department funds. Again, I feel said persons contribute greatly to this department and have been uncompensated for their work. The education and training made them more prepared for their duties that directly affect this department.

I do want to point out just a few things about e-mail from Tammy R. White 09-07-2007.

Tammy stated in the mail that:

"A. IC 36-8-10-5(c) states that a "...sheriff may employ assistant prison matrons if necessary." Subsection (d) provides for the duties of prison matrons and their assistants with respect to female prisoners and boys under 14. Subsection (e) discusses the role of prison matrons and assistant matrons as "members of the department".

A plain reading of IC 36-8-10-5 expresses the legislative intent that assistant prison matrons should play an active role in the sheriff's department. An assistant prison matron can only be hired "if necessary". Subdivision (e)(1) states that the prison matron and assistant matrons are "members of the department" and subdivision (e)(2) states that they "...have the powers and **duties** of members of the department..." IC 36-8-10-9 sets out 9 powers and duties of each "member of the department". Subdivision (e)(3) states the assistant matrons "are entitled to the same salary that other members of the department of the same rank, grade, or position are paid."

Although there may be a question as to how a sheriff would demonstrate that it is "necessary" to hire an assistant prison matron, this would be an appropriate inquiry during an audit. This inquiry might involve looking into the duties that the assistant prison matron performs, how often she performs them, what she is paid, etc. If funds are spent to send an assistant prison matron to a sheriffs' school when she performs no duties for the sheriff's department, we could raise the question of whether this is an appropriate expenditure of public funds".

1. The primary duty of the assistant prison matron is to assist the matron in the supervision of the department. Additionally the assistant matron is involved in providing education, transportation's, emergencies, food supplies, assisting the cook, cleaning, kitchen budgets, and numerous other tasks as assigned. This list is only a sample of the actual duties performed by the

assistant matron. All duties appointed to the assistant matron can be determined by the Sheriff at any time. The state statute only addresses the powers of the appointment. Appointments do not have to ONLY perform a single task, they may do more.

Tammy , of the State Board of Accounts, stated the SBOA may inquire at any time regarding the duties, how often are performed, how the person is paid, and inquire even if no duties are performed. I have kept a log of the time the assistant matron has given during the year, and the tasks performed. For example, Diana, the assistant matron researched, wrote, and submitted a federal grant for a school liaison officer. Submitting grants is time consuming. In addition she cleaned, met with dietitians, filed, stocked, and picked up supplies. She assists the Sheriff in writing press releases and a monthly newsletter for the local newspapers. Diana receives no pay for the work she performs.

Special Deputy Brian Smith has transported detainees from the scenes of criminal search warrants or other drug cases. He assists in vehicle fleet management and other duties as directed. He is always on-call to respond and does so without pay. Both of these individuals require adequate training in order to be prepared for their duties. This summer along, Diana spent three days a week mowing the jail property. We had no detainees available to be outside, no manpower for supervision, and no money to pay on mowing service. She was not paid. Both Brian and Diana assisted in cleanup details and traffic control during our recent storms and flooding. Many times they were called out in early hours in the morning. By not providing adequate training we are putting these volunteers at risk. They have both attended numerous meetings and have the interest and mindset of the Sheriff at heart. The SBOA ruling actually penalizes these individuals who are volunteering their time and talent for the betterment of the Vermillion County Sheriff's Office.

2. According to IC Sec 38 (a), employees and public employees can be paid or not paid. This means the assistant matron and special deputies does not have to be paid for duties performed for the Vermillion County Sheriff's Office. To make claim that those persons do nothing at all is ridiculous. I do have some logs of the time to support the claims.

Unpaid persons according to, IC codes 34-13-2, 34-13-3 34-13-4 and 34-30-14 means a person presently, or formerly, acting on behalf of a government agency, whether temporary or permanent, with or without compensation, including members of boards, committees, commissions or other government agencies, volunteer firefighters or elected officials.

Sec 38 (a) It is not necessary to pay the assistant matron to justify the jobs that she does for the department. I would have it hard to believe that this would not be appropriate for her position. I find it very hard to believe that it is so difficult to volunteer your time and efforts to a department and pay penalties because we want no benefit for ourselves. She had been so disgusted with the claims of the SBOC that she now is distancing herself from the department and refuses to attend anything that the office of Sheriff is involved in with the exception of supporting me in the local parades. This issue was brought to the view of the Vermillion County Counsel in 2007 and they stated that is was okay to have them attend schooling and conferences.

At the December 12, 2007 at the Vermillion County Counsel meeting Sheriff Spence asked the council for permission to allow Diana/Brian to attend training and educational meetings. It is

reflected in the minutes as such; "Sheriff Bob Spence asked for the counsel's approval to pay for a class for his wife, Diana, had taken. He explained that the State Board of Accounts does not like such costs being paid without council approval for people who are not full time employees and that Diana is not a paid employee for the Sheriff's Department. Spence explained that she spends her evenings and weekends at the jail. He also said similar costs have always been paid before, but without the councils approval. Some asked if this was a one-time deal and Spence said no, it could be a few times a year. Costello made a motion to allow, seconded by Daniels. MOTION PASSED AND APPROVED. It was read in full and approved by the Vermillion County Council on 12th day of December 2007.

Ic. 38. (a) "Employee" and "public employee", for purposes of section 91 of this chapter, IC 34-13-2, IC 34-13-3, IC 34-13-4, and IC 34-30-14, mean a person presently or formerly acting on behalf of a governmental entity, whether temporarily or permanently or with or without compensation, including members of boards, committees, commissions, authorities, and other instrumentalities of governmental entities, volunteer firefighters (as defined in IC 36-8-12-2), and elected public officials.

(b) The term also includes attorneys at law whether employed by the governmental entity as employees or independent contractors and physicians licensed under IC 25-22.5 and optometrists who provide medical or optical care to confined offenders (as defined in IC 11-8-1) within the course of their employment by or contractual relationship with the department of correction. However, the term does not include:

(1) an independent contractor (other than an attorney at law, a physician, or an optometrist described in this section);

(2) an agent or employee of an independent contractor;

(3) a person appointed by the governor to an honorary advisory or honorary military position; or

(4) a physician licensed under IC 25-22.5 with regard to a claim against the physician for an act or omission occurring or allegedly occurring in the physician's capacity as an employee of a hospital.

(c) A physician licensed under IC 25-22.5 who is an employee of a governmental entity (as defined in section 49 of this chapter) shall be considered a public employee for purposes of IC 34-13-3-3(21).

(d) For purposes of IC 34-13-3 and IC 34-13-4, the term includes a person that engages in an act or omission before July 1, 2004, in the person's capacity as:

(1) a contractor under IC 6-1.1-4-32 (repealed);

(2) an employee acting within the scope of the employee's duties for a contractor under IC 6-1.1-4-32 (repealed);

(3) a subcontractor of the contractor under IC 6-1.1-4-32 (repealed) that is acting within the scope of the subcontractor's duties; or

(4) an employee of a subcontractor described in subdivision (3) that is acting within the scope of the employee's duties.

As added by P.L.1-1998, SEC.1. Amended by P.L.142-1999, SEC.1; P.L.250-2001, SEC.1; P.L.1-2002, SEC.142; P.L.151-2002, SEC.4 and P.L.178-2002, SEC.112; P.L.1-2003, SEC.88; P.L.1-2007, SEC.223.

- (c) The sheriff may employ assistant prison matrons if necessary.
- (d) The prison matron or the prison matron's assistants shall receive, search, and care for all female prisoners and all boys under fourteen (14) years of age who are committed to or detained in the county jail, municipal lockup, or other detention center in the county.
- (e) The prison matron and assistant matrons:
 - (1) are members of the department;
 - (2) have the powers and duties of members of the department; and
 - (3) are entitled to the same salary that other members of the department of the same rank, grade, or position are paid."

B. IC 36-8-10-10.6(a) states that "[t]he sheriff may appoint as a special deputy any person who is employed by a governmental entity as defined in IC 35-41-1 or private employer, **the nature of which employment necessitates that the person have the powers of a law enforcement officer...**" Apparently the legislature intended that the potential special deputy's employment "necessitates" that she have law enforcement powers. Before the sheriff could appoint his wife as a special deputy he would have to demonstrate that as a school teacher, she needed law enforcement powers.

There is a case decided by the Indiana Court of Appeals on June 6, 2007, (Thompson vs. Hays, 867 N.E.2d 654 (Ind. App. 2007)) that states that "[t]he county fiscal body determines the number of full-time or part-time deputies who may be appointed by the sheriff, Ind. Code 36-2-16-4, as well as the amount of compensation for sheriff's deputies, Ind. Code 36-8-10-4(c)." Based on this case, it appears that the county council must create the number of deputy and special deputy sheriff positions and the budget relating to their compensation. Unless the county council creates the number of deputy positions and the funding for these positions, the sheriff would not be able to hire these deputies. There is a question of whether the county council would have to create an open position for a special deputy if the sheriff's wife is not paid but since the decision to pay or not pay might only be made after the position is filled, it appears that the council still has to create the position.

The sheriff would have to show that appointing his wife as a special deputy meets the requirements of IC 36-8-10-10.6 and the county council would have to create an open position for the appointment of a special deputy and budget the money for the position.

This should not be construed to be a legal opinion but is the position we would take during an audit of the County. The additional analysis above serves only as a basis for our audit position. All legal matters should be discussed with the County Attorney for a legal opinion.

3. This issue was brought to the attention of Jon Spurr, the County Attorney. In IC 36-8-10-10.6 it was pointed out by the SBOA two points of the code, but failed to point out the third reason for hiring a special deputy. In 3 (f) The sheriff, for the purpose of guarding prisoners in the county jail:

- (1) in counties not having a consolidated city, may appoint special deputies to serve as county jail guards; and
- (2) in counties having a consolidated city, shall appoint only special deputies to serve as county jail guards.

This subsection does not affect the rights or liabilities accrued by any county police officer assigned to guard the jail before August 31, 1982.

It is clear that the special deputies can be appointed by the sheriff to guard the jail and when there is no cost for wages, the appointment is at the desecration of the sheriff. Training cost are approved because the training for the position is required by law.

IC 36-8-10-10.6

Special deputies with powers of law enforcement officer; appointment; qualifications; duties

Sec. 10.6. (a) The sheriff may appoint as a special deputy any person who is employed by a governmental entity as defined in IC 35-41-1 or private employer, the nature of which employment necessitates that the person have the powers of a law enforcement officer. During the term of his appointment and while he is fulfilling the specific responsibilities for which the appointment is made, a special deputy has the powers, privileges, and duties of a county police officer under this chapter, subject to any written limitations and specific requirements imposed by the sheriff and signed by the special deputy. A special deputy is subject to the direction of the sheriff and shall obey the rules and orders of the department. A special deputy may be removed by the sheriff at any time, without notice and without assigning any cause.

(b) The sheriff shall fix the prerequisites of training, education, and experience for special deputies, subject to the minimum requirements prescribed by this subsection. Applicants must:

- (1) be twenty-one (21) years of age or older;
- (2) never have been convicted of a felony, or a misdemeanor involving moral turpitude;
- (3) be of good moral character; and
- (4) have sufficient training to insure the proper performance of their authorized duties.

(c) Except as provided in subsection (d), a special deputy shall wear a uniform the design and color of which is easily distinguishable from the uniforms of the Indiana state police, the regular county police force, and all municipal police and fire forces located in the county.

(d) The sheriff may permit a special deputy to wear the uniform of the regular county police force if the special deputy:

- (1) has successfully completed the minimum basic training requirements under IC 5-2-1;
- (2) is periodically assigned by the sheriff to duties of a regular county police officer; and
- (3) is an employee of the department.

The sheriff may revoke permission for the special deputy to wear the uniform of the regular county police force at any time without cause or notice.

(e) The sheriff may also appoint one (1) legal deputy, who must be a member of the Indiana bar. The legal deputy does not have police powers. The legal deputy may continue to practice law.

However, neither the legal deputy nor any attorney in partnership with him may represent a defendant in a criminal case.

(f) The sheriff, for the purpose of guarding prisoners in the county jail:

(1) in counties not having a consolidated city, may appoint special deputies to serve as county jail guards; and

(2) in counties having a consolidated city, shall appoint only special deputies to serve as county jail guards.

This subsection does not affect the rights or liabilities accrued by any county police officer assigned to guard the jail before August 31, 1982.

As added by P.L.311-1983, SEC.45. Amended by P.L.48-1987, SEC.2.

It is clear that Special Deputies can be appointed by the Sheriff to guard the jail and when there is no cost for wages the appointment is at the Sheriff's discretion. All training is approved, due to the fact that the training for such positions is required by law.

In conclusion, I feel strongly justified in paying for training and education of Diana and Brian because it is for the betterment of the department. I made a public request and was granted permission by the Vermillion County Council to pay such expense. The small expense falls short of the amount of compensation that would be paid for the tasks completed. I feel grateful that we are able to utilize volunteer manpower to make out department better. If necessary, I will return the money spent for training. I have also stated that the department will no longer pay for such training expenses in the future for special deputies or the assistant matron. However, I feel I do have the legal right to do so and that it is supported by both the County Council, the County Attorney, and by the Indiana Codes. It is sad that it has discouraged people from giving their talents and education without compensation simply because the SBOA policy is unclear. I do feel other departments are allowed flexibility, and I know that previous administrations were able to do so without the Vermillion County Council's knowledge or approval. I have had both and still seem to be a scapegoat for an unclear policy that is not supported by State Statues.

Sincerely,



Robert J. Spence
Sheriff, Vermillion County

State Board of Accounts Exit Interview

Jane Kuhns,

Per our conversation on August 18, 2008 I have decided to pay the money in question and then try to explain why I did not then and still do not believe that I owe this as a personal expense.

This "Investigation, To Determine if an Investigation is Needed" was all clearly addressed to and titled "Vermillion County Sheriff's Dept".

The Attorneys that Robert Spence and I met with are not tax attorneys.

This action could not have been brought against me personally, only in the capacity of Sheriff. This started out as the legality of taking Sheriff Vehicles to Louisiana then went to the personal tax accounts of the people of the department who were employed by Cinergy to secure their equipment and personnel in Louisiana. I had paid my taxes on this money but as Sheriff I felt that I need the advice of an attorney to close this matter.

The date and action by attorneys clearly show the purpose was to close this action in a timely matter for the entire department.

It is a practice of Indiana Sheriff's, one that I did not do, to retain the services of Howard Williams and pay for this service out of the Sheriff's Discretionary Fund. I feel that if I had chosen this route that this would not be questioned.

The part of the claim that addresses the fact that Mr. Katz forwarded a letter from my tax preparer, Mike Perkins of Larrison Tax Service, Terre Haute, Indiana (stating that he had reviewed my taxes and that they had been paid in full, to the Special Prosecutor is a part of the bill that I can be construed as personal. But, If I, as a citizen, not as Sheriff had went to Louisiana and had worked for Cinergy, my taxes, and whether they had been paid or not would never had been questioned in this manner , only in the capacity of Sheriff would I be opened to this.

COUNTY SHERIFF
VERMILLION COUNTY
SUMMARY

	Charges	Credits	Balance Due
Kim H. Hawkins, former Sheriff:			
Personal Expenses, page 4	\$ 1,810	\$	\$
Paid by Kim H. Hawkins, former Sheriff			
August 25, 2008, Receipt 15		1,810	-
 Robert Spence, Sheriff:			
Personal Expenses, page 4	400		
Paid by Robert Spence, Sheriff			
January 29, 2008		400	-
 Totals	\$ 2,210	\$ 2,210	\$ -