

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

EXAMINATION REPORT

OF

TOWN OF KOUTS

PORTER COUNTY, INDIANA

January 1, 2006 to December 31, 2007



FILED
12/02/2008

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OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Clerk-Treasurer	Gregory S. Frame	01-01-06 to 12-31-11
President of the Town Council	David A. Brooks	01-01-06 to 12-31-08



STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

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INDEPENDENT ACCOUNTANT'S REPORT

TO: THE OFFICIALS OF THE TOWN OF KOUTS, PORTER COUNTY, INDIANA

We have examined the financial information presented herein of the Town of Kouts (Town), for the period of January 1, 2006 to December 31, 2007. The Town's management is responsible for the financial information presented herein. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and, accordingly, included examining, on a test basis, evidence supporting the financial information presented herein and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

In our opinion, the financial information referred to above presents fairly, in all material respects, the financial information of the Town for the years ended December 31, 2006 and 2007, based on the criteria set forth in the uniform compliance guidelines established by the Indiana State Board of Accounts.

The Schedule of Capital Assets and Schedule of Long-Term Debt, as listed in the Table of Contents, are presented for additional analysis and are not required parts of the basic financial information. They have not been subjected to the examination procedures applied to the basic financial information and, accordingly, we express no opinion on them.

STATE BOARD OF ACCOUNTS

October 28, 2008

TOWN OF KOUTS
SCHEDULES OF RECEIPTS, DISBURSEMENTS, AND CASH AND INVESTMENT BALANCES
ALL GOVERNMENTAL, PROPRIETARY, AND FIDUCIARY FUND TYPES
As Of And For The Years Ended December 31, 2006 And 2007

	Cash and Investments		Cash and Investments	
	01-01-06	Receipts	Disbursements	12-31-06
Governmental Funds:				
General	\$ 175,846	\$ 419,579	\$ 406,135	\$ 189,290
Motor Vehicle Highway	47,275	66,832	60,425	53,682
Local Road and Street	16,871	22,057	51,285	(12,357)
Park and Recreation	6,820	7,155	9,312	4,663
Law Enforcement Continuing Education	7,534	4,478	1,649	10,363
Riverboat	32,151	10,685	-	42,836
Rainy Day	-	-	-	-
Police Donation	2,205	1,371	151	3,425
Cumulative Capital Improvement	10,606	6,066	5,908	10,764
Cumulative Capital Development	67,013	19,636	24,875	61,774
Cumulative Building and Fire Fighting Equipment	80,671	16,185	-	96,856
County Economic Development Income Tax	78,274	146,456	111,183	113,547
Local Major Moves Construction	-	211,169	-	211,169
Garbage	(1,033)	79,871	70,628	8,210
Leaf	2,301	26,195	30,600	(2,104)
Stormwater	159,862	106,688	35,541	231,009
Park Deposit	700	750	650	800
Park Donation	375	-	-	375
Town Donation	2,119	-	530	1,589
Debt Service	(490)	48,486	13,679	34,317
College Avenue	(30,634)	30,634	-	-
Petty Cash	-	104	4	100
Centennial Committee of 2065	-	950	-	950
Levy Excess	-	-	-	-
Proprietary Funds:				
Water Utility - Operating	(49,821)	926,791	938,758	(61,788)
Water Utility - Bond and Interest	27,533	-	27,533	-
Water Utility - Redevelopment Bonds	426,724	13,179	131,307	308,596
Water Utility - Customer Deposit	60,129	8,503	11,779	56,853
Water Utility - Drinking Water SRF Loan	25,064	24,000	22,785	26,279
Water Utility - Tower Painting	54,000	18,000	57,690	14,310
Wastewater Utility - Operating	925,541	519,602	469,230	975,913
Wastewater Utility - Bond and Interest	114,878	150,000	147,171	117,707
Wastewater Utility - Depreciation	22,510	-	-	22,510
Fiduciary Fund:				
Payroll	784	298,336	298,757	363
Totals	\$ 2,265,808	\$ 3,183,758	\$ 2,927,565	\$ 2,522,001

	Cash and Investments		Cash and Investments	
	01-01-07	Receipts	Disbursements	12-31-07
Governmental Funds:				
General	\$ 189,290	\$ 269,034	\$ 430,351	\$ 27,973
Motor Vehicle Highway	53,682	75,888	45,903	83,667
Local Road and Street	(12,357)	21,058	6,000	2,701
Park and Recreation	4,663	5,812	9,261	1,214
Law Enforcement Continuing Education	10,363	5,386	8,527	7,222
Riverboat	42,836	10,708	7,123	46,421
Rainy Day	-	54,622	17,094	37,528
Police Donation	3,425	2,574	3,032	2,967
Cumulative Capital Improvement	10,764	5,964	1,811	14,917
Cumulative Capital Development	61,774	10,428	32,155	40,047
Cumulative Building and Fire Fighting Equipment	96,856	9,245	-	106,101
County Economic Development Income Tax	113,547	108,628	175,392	46,783
Local Major Moves Construction	211,169	4,480	90,000	125,649
Garbage	8,210	88,384	89,491	7,103
Leaf	(2,104)	28,207	25,900	203
Stormwater	231,009	111,410	23,752	318,667
Park Deposit	800	1,010	850	960
Park Donation	375	-	221	154
Town Donation	1,589	-	377	1,212
Debt Service	34,317	43,177	71,012	6,482
College Avenue	-	-	-	-
Petty Cash	100	426	426	100
Centennial Committee of 2065	950	4	-	954
Levy Excess	-	24,027	24,027	-
Proprietary Funds:				
Water Utility - Operating	(61,788)	918,344	916,758	(60,202)
Water Utility - Bond and Interest	-	-	-	-
Water Utility - Redevelopment Bonds	308,596	-	254,570	54,026
Water Utility - Customer Deposit	56,853	6,540	5,303	58,090
Water Utility - Drinking Water SRF Loan	26,279	24,000	23,330	26,949
Water Utility - Tower Painting	14,310	18,000	11,310	21,000
Wastewater Utility - Operating	975,913	465,092	531,449	909,556
Wastewater Utility - Bond and Interest	117,707	150,000	143,751	123,956
Wastewater Utility - Depreciation	22,510	-	-	22,510
Fiduciary Fund:				
Payroll	363	306,118	306,660	(179)
Totals	\$ 2,522,001	\$ 2,768,566	\$ 3,255,836	\$ 2,034,731

The accompanying notes are an integral part of the financial information.

TOWN OF KOUTS
NOTES TO FINANCIAL INFORMATION

Note 1. Introduction

The Town was established under the laws of the State of Indiana. The Town provides the following services: public safety, health and social services, culture and recreation, general administrative services, water distribution and wastewater treatment.

Note 2. Fund Accounting

The Town uses funds to report on its cash and investments and the results of its operations on a cash basis. Fund accounting is designed to demonstrate legal compliance and to aid financial management by segregating transactions related to certain governmental functions or activities.

Note 3. Budgets

The operating budget is initially prepared and approved at the local level. In addition, funds for which property taxes are levied or highway use taxes are received are subject to final approval by the Indiana Department of Local Government Finance.

Note 4. Property Taxes

Property taxes levied are collected by the County Treasurer and are distributed to the Town in June and December. State statute (IC 6-1.1-17-16) requires the Indiana Department of Local Government Finance to establish property tax rates and levies by February 15. These rates were based upon the preceding year's March 1 (lien date) assessed valuations adjusted for various tax credits. Taxable property is assessed at 100% of the true tax value (determined in accordance with rules and regulations adopted by the Indiana Department of Local Government Finance). Taxes may be paid in two equal installments which become delinquent if not paid by May 10 and November 10, respectively.

Note 5. Deposits and Investments

Deposits, made in accordance with Indiana Code 5-13, with financial institutions in the State of Indiana at year end were entirely insured by the Federal Depository Insurance Corporation or by the Indiana Public Deposit Insurance Fund. This includes any deposit accounts issued or offered by a qualifying financial institution.

State statute (IC 5-13-9) authorizes the Town to invest in securities including, but not limited to, federal government securities, repurchase agreements, and certain money market mutual funds. Certain other statutory restrictions apply to all investments made by local governmental units.

Note 6. Long-Term Debt

The Town has entered into various debts such as bonds for improvements to the water system, loans for water and wastewater plant improvements, loan for a mower and various capital leases. The outstanding principal at December 31, 2007, was \$465,000, \$1,283,779, \$3,032, and \$94,353, respectively.

TOWN OF KOUTS
SUPPLEMENTARY INFORMATION
SCHEDULE OF CAPITAL ASSETS

For The Year Ended December 31, 2007

Capital assets are reported at actual or estimated historical cost based on appraisals or deflated current replacement cost. Contributed or donated assets are reported at estimated fair value at the time received.

General infrastructure assets completed in the current and prior years have been reported.

<u>Primary Government</u>	<u>Ending Balance</u>
Governmental activities:	
Capital assets, not being depreciated:	
Land	\$ 1,122,661
Infrastructure	2,758,915
Buildings	199,381
Improvements other than buildings	282,701
Machinery and equipment	229,335
Construction in progress	<u>-</u>
 Total governmental activities, capital assets not being depreciated	 <u>\$ 4,592,993</u>
<u>Primary Government</u>	<u>Ending Balance</u>
Business-type activities:	
Water Utility:	
Capital assets, not being depreciated:	
Land	\$ -
Infrastructure	924,656
Buildings	8,000
Improvements other than buildings	712,200
Machinery and equipment	<u>108,329</u>
 Total Water Utility capital assets	 <u>1,753,185</u>
Wastewater Utility:	
Capital assets, not being depreciated:	
Land	-
Infrastructure	667,424
Buildings	358,540
Improvements other than buildings	1,631,284
Machinery and equipment	<u>487,534</u>
 Total Wastewater Utility capital assets	 <u>3,144,782</u>
 Total business-type activities capital assets	 <u>\$ 4,897,967</u>

TOWN OF KOUTS
SUPPLEMENTARY INFORMATION
SCHEDULE OF LONG-TERM DEBT
December 31, 2007

The Unitttype has entered into the following debt:

Description of Debt	Ending Principal Balance	Principal and Interest Due Within One Year
Governmental Activities:		
Capital leases:		
Local Road and Street 2005 Ford Truck (1/3)	\$ 4,375	\$ 4,375
Motor Vehicle Highway Bobcat Skid-Steer Loader (1/3)	7,219	3,102
Stormwater Vactor (1/3)	19,857	9,698
Notes and loans payable		
Park and Recreation Cub Cadet Mower	3,032	1,239
Bonds payable:		
General obligation bonds:		
Redevelopment Commission Special Taxing District	<u>465,000</u>	<u>40,000</u>
Total governmental activities debt	<u>\$ 499,483</u>	<u>\$ 58,414</u>
Business-type Activities:		
Water Utility		
Capital leases:		
2005 Ford Truck (1/3)	\$ 4,375	\$ 4,375
Bobcat Skid-Steer Loader (1/3)	7,219	3,102
Notes and loans payable		
2000 SRF Loan (Well Head)	<u>252,585</u>	<u>14,000</u>
Total Water Utility	<u>264,179</u>	<u>21,477</u>
Wastewater Utility		
Capital leases:		
2005 Ford Truck (1/3)	4,375	4,375
Bobcat Skid-Steer Loader (1/3)	7,219	3,102
Vactor (2/3)	39,714	19,395
Notes and loans payable		
1994 SRF Loan I	755,000	85,000
1995 SRF Loan II	<u>276,194</u>	<u>30,000</u>
Total Wastewater Utility	<u>1,082,502</u>	<u>141,872</u>
Total business-type activities debt:	<u>\$ 1,346,681</u>	<u>\$ 163,349</u>

TOWN OF KOUTS
EXAMINATION RESULTS AND COMMENTS

OVERDRAWN CASH BALANCES

The cash balances of the Local Road and Street, Leaf, Water Operating, and Payroll funds were overdrawn during the examination period. A similar comment was made in the prior Report B28798.

The cash balance of any fund may not be reduced below zero. Routinely overdrawn funds could be an indicator of serious financial problems which should be investigated by the governmental unit. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

CUSTOMER DEPOSIT REGISTER

The detailed customer deposit register does not reconcile with the customer deposit amount recorded on the general ledger.

At all times, the manual and computerized records, subsidiary ledgers, control ledger, and reconciled bank balance should agree. If the reconciled bank balance is less than the subsidiary or control ledgers, then the responsible official or employee may be held personally responsible for the amount needed to balance the fund. (Accounting and Uniform compliance Guidelines Manual for Cities and Towns, Chapter 7)

COLLECTION OF AMOUNTS DUE

The Clerk-Treasurer is delinquent in his utility payments to both the Water and Wastewater Utilities.

Governmental units have a responsibility to collect amounts owed to the governmental unit pursuant to procedures authorized by statute. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

AMOUNTS COLLECTED

Sales tax was over-charged to one customer during 2007. A review of this customer's account indicated that the information used to establish the account in the computer was not entered correctly.

Fees should only be collected as specifically authorized by statute or properly authorized resolutions or ordinances, as applicable, which are not contrary to statutory or Constitutional provisions. (Accounting and Uniform compliance Guidelines Manual for Cities and Towns, Chapter 7)

FEDERAL AND STATE AGENCIES – COMPLIANCE REQUIREMENTS

The Town's estimated payments to the Indiana Department of Revenue for Utility Receipts Tax were late for 2006 and 2007. During 2006, the Town paid interest and penalties of \$ 651 related to late payments of 2004 and 2005 estimated payments related to Utility Receipts Tax.

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.

TOWN OF KOUTS
EXAMINATION 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 Cities and Towns, Chapter 7)

DELINQUENT WASTEWATER ACCOUNTS

Our examination of the Wastewater Utility revealed that sewage liens filed during the examination period incorrectly included amounts from past due water, sanitation and drainage utilities. Indiana Code 36-9-23-33 applies to Wastewater accounts only. A similar comment was issued in the previous Report B28798.

The following are excerpts from Indiana Code 36-9-23, which is entitled "Municipal Sewage Works":

Indiana Code 36-9-23-25(a) states in part:

". . . the municipal legislative body shall, by ordinance, establish just and equitable fees for the services rendered by the sewage works, and provide the dates on which the fees are due."

Indiana Code 36-9-23-32(a) states in part:

"Fees assessed against real property under this chapter . . . constitute a lien against the property assessed. The lien is superior to all other liens except tax liens. Except as provided in subsections (b) and (c), the lien attaches when notice of the lien is filed in the county recorder's office under section 33 of this chapter."

COMPENSATION AND BENEFITS

The Town Marshal received two weeks extra vacation pay from an expired "Employment Agreement." Total compensation was \$1,783.92, \$1,855.27, and \$1,855.27 for 2006, 2007, and 2008 respectively. None of these payments were included in the salary ordinances.

All compensation and benefits paid to officials and employees must be included in the labor contract, salary ordinance, resolution, or salary schedule adopted by the governing body unless otherwise authorized by statute. Compensation should be made in a manner that will facilitate compliance with state and federal reporting requirements. (Accounting and Uniform compliance Guidelines Manual for Cities and Towns, Chapter 7)

TOWN OF KOUTS
EXAMINATION RESULTS AND COMMENTS
(Continued)

ORDINANCE VIOLATIONS BUREAU

The Town is processing moving traffic violations as ordinance violations and collecting the related fines in the Clerk-Treasurer's office.

Indiana Code 33-36-2-1 states in part:

"The legislative body of a municipal corporation may establish, by ordinance or code, an ordinance violations bureau."

Indiana Code 36-1-6-3 states in part:

"(a) Certain ordinances may be enforced by a municipal corporation without proceeding in court. . . .

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

Indiana Code 34-28-5-1-(a) states in part

"An action to enforce a statute defining an infraction shall be brought in the name of the State of Indiana by the prosecuting attorney for the judicial circuit in which the infraction allegedly took place."

TOWN OF KOUTS
EXIT CONFERENCE

The contents of this report were discussed on October 28, 2008, with Gregory S. Frame, Clerk-Treasurer; and Laurie A. Tribble, Deputy Clerk-Treasurer. The official response has been made a part of this report and may be found on pages 12 through 14.

October 31, 2008

State Board of Accounts
302 W. Washington St RM E418
Indianapolis, IN 46204-2765

RE: OFFICIAL RESPONSE

Dear State Board:

Attached to this letter is an official response from the Town of Kouts regarding comments on our Ordinance Violations Bureau to be inserted in our Annual audit report.

Sincerely,

A handwritten signature in cursive script that reads "Greg".

Gregory S. Frame
Clerk-Treasurer

HILBRICH CUNNINGHAM SCHWERD
DOBOSZ & VINOVICH, LLP

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WALTER F. SANDOVAL*
BENJAMIN D. FRYMAN
MEGHANN E. LABADIE
*ALSO ADMITTED IN ILLINOIS

October 30, 2008

Greg Frame, Clerk Treasurer
Town of Kouts
210 S. Main Street
P.O. Box 93
Kouts, IN 46347

Re: State Board of Accounts

Dear Mr. Frame:

In response to your comments that the auditor for the State Board of Accounts takes the position that the Town is assessing fines for speeding and other moving violations improperly. This conclusion on the part of the auditor is based on the auditor's interpretation of I.C. 34-28-5 and I.C. 33-6-3. Under these statutes, the auditor's position is that state law requires that all moving violation cases (whether brought under state statute or town ordinance) be heard in a circuit, superior, county, city or town court or traffic violations bureau designated by one of these courts and that a moving traffic violation may not be brought before or disposed of by a town violations bureau pursuant to an enabling ordinance.

After reviewing I.C. 34-28-5 and I.C. 33-6-3, it is my opinion that the State Board of Accounts on this matter is incorrect. Contrary to the audit comment, I.C. 34-28-5 makes no mention of a specific jurisdiction for moving traffic violations. In Section 1 of this statute, sub-section (a) provides that an action to enforce a statute defining an infraction (e.g. speeding) shall be brought in the name of the State of Indiana by the prosecuting attorney for the judicial circuit for which the infraction took place. Obviously sub-section (a) contemplates that statutory law (state statute) enforcement by prosecuting attorneys will occur in one of these courts. However, sub-section (b) of Section 1 of this statute specifies that an action to enforce an ordinance shall be brought in the name of the municipal corporation. Sub-section (b) does not provide that the action will be prosecuted by a prosecuting attorney and, like all municipal ordinance violations, can be prosecuted by the town attorney. Sub-section (b) also does not require that the enforcement of an ordinance be brought in a circuit, superior, county, city or town court or traffic violations bureau designated by one of these courts. Since the Town of Kouts has specifically created a Violations Bureau as permitted by I.C. 33-6-3, these town ordinance violations, including moving violations such as speeding, may be brought before the Violations Bureau and resolved at that level without the necessity of being filed in one of the courts

HILBRICH CUNNINGHAM SCHWERD DOBOSZ & VINOVIK, LLP

Town of Kouts
October 30, 2008

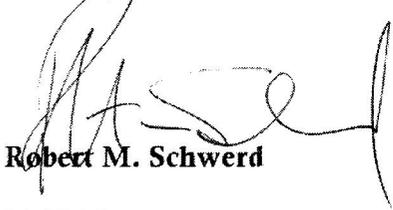
Page No. 2

enumerated by the auditor's comment. Of course, if the ordinance violation is not resolved in a timely fashion through the use of a town violation bureau, the matter would then be referred to one of the above-mentioned courts.

The Kouts Violations Bureau Ordinance complies with the state law in that it lists a number of ordinance violations which may be handled through the creation of the Violations Bureau. Those violations include traffic moving violations. Nowhere in I.C. 33-6-3 is it suggested that ordinance violations involving moving traffic violations may not be handled through a Town Violations Bureau. The Town of Kouts has ordinances with respect to moving traffic violations on its town roads and the disposition of those ordinance violations before the Town Violations Bureau is permitted, and indeed contemplated, by the creation of the violation bureau statute. For that reason, it is my opinion that I.C. 34-28-5-1(b) in combination with I.C. 33-6-3 and the Kouts Ordinance creating the Violations Bureau, specifying the infractions which may be handled by that bureau, permit the Town of Kouts to dispose of traffic moving violations on town roads, through the Violations Bureau of the Town.

Please feel free to provide the auditor with a copy of this opinion. If further discussion or review of this matter is needed, please call me.

Sincerely,



Robert M. Schwerd

RMS/sln