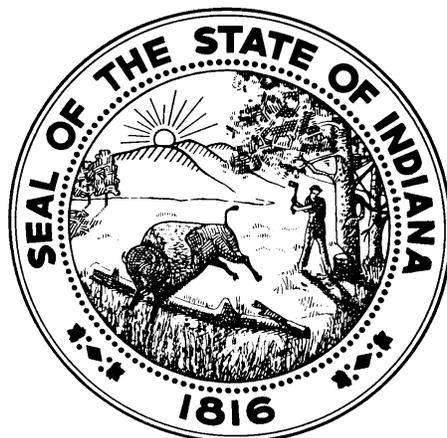


**STATE BOARD OF ACCOUNTS**  
**302 West Washington Street**  
**Room E418**  
**INDIANAPOLIS, INDIANA 46204-2769**

EXAMINATION REPORT  
OF  
TOWN OF MERRILLVILLE  
LAKE COUNTY, INDIANA  
January 1, 2008 to December 31, 2008



**FILED**  
12/08/2009



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OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Clerk-Treasurer	Eugene M. Guernsey	01-01-08 to 12-31-11
President of the Town Council	Ronald J. Widing Joseph Shudick, Jr.	01-01-08 to 12-31-08 01-01-09 to 12-31-09



**STATE OF INDIANA**  
AN EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF ACCOUNTS  
302 WEST WASHINGTON STREET  
ROOM E418  
INDIANAPOLIS, INDIANA 46204-2769

Telephone: (317) 232-2513  
Fax: (317) 232-4711  
Web Site: [www.in.gov/sboa](http://www.in.gov/sboa)

INDEPENDENT ACCOUNTANT'S REPORT

TO: THE OFFICIALS OF THE TOWN OF MERRILLVILLE, LAKE COUNTY, INDIANA

We have examined the financial information presented herein of the Town of Merrillville (Town), for the period of January 1, 2008 to December 31, 2008. 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 year ended December 31, 2008, 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 27, 2009

TOWN OF MERRILLVILLE  
SCHEDULES OF RECEIPTS, DISBURSEMENTS, AND CASH AND INVESTMENT BALANCES  
ALL GOVERNMENTAL, PROPRIETARY, AND FIDUCIARY FUND TYPES  
As Of And For The Year Ended December 31, 2008

	Cash and Investments 01-01-08	Receipts	Disbursements	Cash and Investments 12-31-08
Governmental Funds:				
General	\$ (121,093)	\$ 22,204,830	\$ 21,736,541	\$ 347,196
Motor Vehicle Highway	(27,628)	1,051,488	1,180,605	(156,745)
Local Road and Street	(5,266)	414,685	340,037	69,382
Park and Recreation	(63,742)	380,136	273,416	42,978
Town Party Donation	218	-	-	218
Town Donations	2,561	10,776	6,566	6,771
Dumpster Nonreverting	981	1,560	2,541	-
Parks Nonreverting	24,643	30,688	34,187	21,144
EMS/Ambulance	(18,946)	634,161	529,961	85,254
Emergency Management Agency	(2,736)	-	1,398	(4,134)
Court Probation	4,958	41,320	40,194	6,084
Public Defender Fees	11,202	11,157	1,834	20,525
Record Perpetuation	(1,135)	9,419	8,602	(318)
Veterans Memorial	29,007	10,143	12,946	26,204
Engineering Fees	32,831	92,915	101,616	24,130
Noxious Weeds Nonreverting	165	9,056	-	9,221
Landscaping Escrow	2,500	26,500	19,000	10,000
Park Impact Fees	117,997	47,511	106,484	59,024
Firefighters Equipment	1,180	15,008	-	16,188
Police Equipment	38,417	220,443	99,018	159,842
Police Donation	6,091	3,208	6,009	3,290
Law Enforcement Continuing Education	8,497	48,180	29,905	26,772
Economic Development Commission	190	-	-	190
Special Projects	364	-	-	364
Police Special Grant	10,239	36,849	40,318	6,770
Tourism	206	4,677	-	4,883
Property Seizure	56,873	27,951	39,695	45,129
Off Track Betting Donation	20,129	43,395	68,012	(4,488)
New Town Hall Donation	743	-	-	743
Parks Grant	-	15,000	15,000	-
Park Donation	7,964	1,510	1,741	7,733
Cumulative Capital Improvement	1,122	99,382	50	100,454
Cumulative Capital Development	270,546	397,612	440,397	227,761
GO Bond 2004	18,147	90,492	108,639	-
Merrillville Road TIF	4,826	2,255,139	1,899,290	360,675
Merrillville Road TIF Debt Service	253,297	1,737,954	1,437,597	553,654
93rd Avenue Redevelopment	1,524	450,371	451,895	-
GO Bond Debt Service	110,172	859,532	726,287	243,417
Bridgewood Estates Phase 2	-	75,000	-	75,000
Certified Technology Park	-	129,735	129,735	-
Ameriplex at Crossroads	-	282,513	282,513	-
Broadway TIF	(14,350)	114,504	82,010	18,144
Mississippi Street TIF Debt Service	(93,382)	1,369,254	682,915	592,957
Mississippi Street TIF Project	113,568	1,265,239	1,378,807	-
Mississippi Street TIF Debt Service Reserve	844,276	6,217	521,044	329,449
TIF Debt Service Reserves	-	192,167	-	192,167
Fire and Hazmat	28,846	188,109	183,918	33,037
Recycling Grant	34,316	311,252	298,981	46,587
Bike Trail Grant	-	800,000	620,840	179,160
Casino Gaming	172,239	631,493	533,750	269,982
RDC Bonds 2005	144,544	800,501	810,033	135,012
RDC Bonds 2005 Debt Service	783,398	1,438,105	1,792,823	428,680
Major Moves Construction	3,331	89,159	92,490	-
Proprietary Fund:				
Health Insurance Escrow	105,902	1,923,590	1,957,533	71,959
Fiduciary Funds:				
Payroll	122,066	6,047,834	5,962,408	207,492
Cable Escrow	191,941	2,730	-	194,671
Employees Insurance Benefits Withholding	20,869	1,621,387	1,639,874	2,382
Police Officers' Pension	(186,577)	351,810	409,230	(243,997)
Police Pension - PERF	33,260	135,738	134,918	34,080
Town Court	313,844	1,179,461	1,130,153	363,152
Totals	<u>\$ 3,415,135</u>	<u>\$ 50,238,846</u>	<u>\$ 48,403,756</u>	<u>\$ 5,250,225</u>

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

TOWN OF MERRILLVILLE  
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, and general administrative services.

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.

TOWN OF MERRILLVILLE  
NOTES TO FINANCIAL INFORMATION  
(Continued)

Note 6. Pension Plan

Public Employees' Retirement Fund

Plan Description

The Town contributes to the Indiana Public Employees' Retirement Fund (PERF), a defined benefit pension plan. PERF is an agent multiple-employer public employee retirement system, which provides retirement benefits to plan members and beneficiaries. All full-time employees are eligible to participate in this defined benefit plan. State statutes (IC 5-10.2 and 5-10.3) govern, through the PERF Board, most requirements of the system, and give the Town authority to contribute to the plan. The PERF retirement benefit consists of the pension provided by employer contributions plus an annuity provided by the member's annuity savings account. The annuity savings account consists of members' contributions, set by state statute at 3% of compensation, plus the interest credited to the member's account. The employer may elect to make the contributions on behalf of the member.

PERF administers the plan and issues a publicly available financial report that includes financial statements and required supplementary information for the plan as a whole and for its participants. That report may be obtained by contacting:

Public Employees' Retirement Fund  
Harrison Building, Room 800  
143 West Market Street  
Indianapolis, IN 46204  
Ph. (317) 233-4162

Funding Policy and Annual Pension Cost

The contribution requirements of the plan members for PERF are established by the Board of Trustees of PERF.

Note 7. Subsequent Event

Reassessment and Property Taxes

Due to delays caused by trending of assessments, the assessed valuations of Lake County were not finalized by February 15, 2009, as required. Therefore, the 2008 pay 2009 property tax rates and levies, as well as related budget orders for 2009, were not established until July 31, 2009. Currently, the County is anticipating billing the 2008 pay 2009 taxes in two installments with due dates of October 29 and November 30, 2009.

TOWN OF MERRILLVILLE  
NOTES TO FINANCIAL INFORMATION  
(Continued)

Tax Anticipation Warrants

The Town received tax anticipation warrants on January 22, 2009, in the amount of \$4,800,000 which are due December 31, 2009.

Delinquent Liabilities

The Town currently owes \$393,930 in delinquent streetlight bills. The Town continues to negotiate with the vendor.

TOWN OF MERRILLVILLE  
 SUPPLEMENTARY INFORMATION  
 SCHEDULE OF CAPITAL ASSETS  
 For The Year Ended December 31, 2008

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.

<u>Primary Government</u>	<u>Ending Balance</u>
Governmental activities:	
Capital assets, not being depreciated:	
Land	\$ 6,249,408
Infrastructure	68,729,205
Buildings	3,567,134
Improvements other than buildings	1,834,785
Machinery and equipment	<u>8,864,671</u>
 Total governmental activities, capital assets not being depreciated	 <u>\$ 89,245,203</u>

TOWN OF MERRILLVILLE  
 SUPPLEMENTARY INFORMATION  
 SCHEDULE OF LONG-TERM DEBT  
 December 31, 2008

The Town has entered into the following debt:

Description of Debt	Ending Principal Balance	Principal Due Within One Year
Governmental activities:		
Capital leases:		
Mower, Sweeper, Backhoe, Truck, 5 Police Cars	\$ 205,000	\$ 54,932
10 Police Cars, Leaf Collector	115,620	31,132
2 Trucks, 4 Dump Trucks, Equipment	326,782	88,635
12 police cars	160,949	77,979
Notes and loans payable:		
Merrillville Revenue Note	725,000	160,000
Bonds payable:		
General obligation bonds:		
RDC 2005	7,935,000	530,000
GO 2004	4,000,000	295,000
Revenue bonds:		
Merrillville Rd TIF	2,235,000	125,000
Mississippi St TIF	8,900,000	305,000
<b>Total governmental activities debt</b>	<b><u>\$ 24,603,351</u></b>	<b><u>\$ 1,667,678</u></b>

TOWN OF MERRILLVILLE  
EXAMINATION RESULTS AND COMMENTS

OVERDRAWN CASH BALANCES

The cash balances of the following funds were overdrawn December 31, 2008:

Fund	Balance
Police Officers' Pension - 1925	\$ (243,997)
Motor Vehicle Highway	(156,745)
Off Track Betting Donation	(4,488)
Emergency Management Agency	(4,134)
Record Perpetuation	(318)

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)

APPROPRIATIONS

The records presented for examination indicated the following expenditures in excess of budgeted appropriations:

Fund	Excess Amount Expended
General	\$ 3,516,360
EMS/Ambulance	61,102
RDC Bonds 2005 Debt Service	600

Of the \$3,516,360 overspent in the General Fund in 2008, \$2,862,482 was for invoices from 2007. In addition, the Town did not have an approved budget for the Local Road and Street, Motor Vehicle Highway, and Cumulative Capital Improvement funds for 2008.

IC 6-1.1-18-4 states in part: ". . . the proper officers of a political subdivision shall appropriate funds in such a manner that the expenditures for a year do not exceed its budget for that year as finally determined under this article."

The law requires the adoption of a balanced budget which shall include all anticipated revenues and expenses of every organizational unit with the exception of utilities. A budget is the record of a definite financial program for a given period of time and the means of carrying such program into effect. It shows the contemplated expenditures and their relation to the revenues received and expected. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 4)

TEMPORARY TRANSFER OF FUNDS

Temporary transfers were made in 2005 for \$165,000 from the Cumulative Capital Development Fund to the Cumulative Capital Improvement Fund, and \$260,000 from the 93rd Avenue Redevelopment fund to the Redevelopment Bond Debt Service fund. These temporary loans had not been repaid as of December 31, 2008.

TOWN OF MERRILLVILLE  
EXAMINATION RESULTS AND COMMENTS  
(Continued)

IC 36-1-8-4 concerning temporary transfer states in part:

"(a) . . . (3) Except as provided in subsection (b), the prescribed period must end during the budget year of the year in which the transfer occurs. (4) The amount transferred must be returned to the other fund at the end of the prescribed period. . . ."

"(b) If the fiscal body of a political subdivision determines that an emergency exists that requires an extension of the prescribed period of a transfer under this section, the prescribed period may be extended for not more than six (6) months beyond the budget year of the year in which the transfer occurs if the fiscal body does the following: (1) Passes an ordinance or a resolution that contains the following: (A) A statement that the fiscal body has determined that an emergency exists. (B) A brief description of the grounds for the emergency. (C) The date the loan will be repaid that is not more than six (6) months beyond the budget year in which the transfer occurs. (2) Immediately forwards the ordinance or resolution to the state board of accounts and the department of local government finance."

Each governmental unit is responsible for complying with the ordinances, resolutions, and policies it adopts. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

CITY/TOWN COURT CASH BOOK (FORM 213CT)

The City/Town Court Cash Book (Form 213ct) was not posted correctly. The Court Bookkeeper entered X's in the columns for fees rather than the actual amounts for each receipt issued. The number of the X's is multiplied by the fee for that column and entered as the column total. This method of recording began in 2007.

Prescribed Form No. 213CT, City/Town Court Cash Book, is to be used to record receipts and checks issued. The receipts and disbursements should be recorded and totaled daily. (Accounting and Uniform Compliance Guidelines Manual for City and Town Courts, Chapter 7)

Officials and employees are required to use State Board of Accounts prescribed or approved forms in the manner prescribed. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

TOWN COURT PUBLIC DEFENDER

On March 28, 2000, Town Ordinance Number 00-10 established a Court Public Defender Fund to account for "Court Public Defender Funds and Expenditures". There was no fee schedule establishing the public defender fee. When there was a public defender on a case, the judge ordered the balance of the bond after payment of court costs and other fees to be paid to the Court Public Defender Fund. At December 31, 2008, the Court Public Defender Fund cash balance was \$20,525.26. There is no statutory authority for the Town Court of Merrillville to have a supplemental public defender services fund. Indiana Code 33-40-3-10(a), which applies to Lake County, allows cities to set up such a fund, but towns are not mentioned in this section. Indiana Code 33-40-3-5 provides that the county can set up one program " . . . providing court appointed legal services in the county, . . ." which would include the Town of Merrillville. The county is required to provide public defender service to the Town because the legislature has provided this as the only option in Lake County. (IC 33-40-7-5-5(a)(4); IC 33-40-7-1(3))

The funds currently held by the Town to pay public defenders should be paid to the county. (IC 35-33-8-3.2(b))

TOWN OF MERRILLVILLE  
EXAMINATION RESULTS AND COMMENTS  
(Continued)

IC 33-40-3-10(a) states in part:

"In a county with a population of more than four hundred thousand (400,000) and less than seven hundred thousand (700,000) in which a county public defender service is not provided, a supplemental public defender services fund must be established in each city for providing funding for a public defender to represent indigent defendants in a city court."

IC 33-40-3-5 states in part:

"A county may not have more than one (1) program providing court appointed legal services in the county, unless the fiscal body of the county agrees to allow additional court appointed legal services programs in the county."

IC 33-40-7-5-5(a)(4) states in part:

"The board shall prepare a comprehensive plan that must include at least one (1) of the following methods of providing legal defense services to indigent persons:...(4) In a county described in section 1(3) of this chapter, establishing a public defender's office for the criminal division of the superior court."

IC 33-40-7-1(3) states in part:

"This chapter does not apply to a county that: (3) has a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000), except as provided in sections 5 and 11 of this chapter."

IC 33-40-8-1 states in part:

"The judge of any court having criminal jurisdiction, except in those counties with a population of at least four hundred thousand (400,000), may contract with any attorney or group of attorneys admitted to practice law in Indiana to provide legal counsel for all or some of the poor persons coming before the court charged with the commission of a crime and not having sufficient means to employ an attorney to defend themselves."

IC 35-33-8-3.2(b) states in part:

"Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining under subsection (a)(2) to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-40-3."

RECEIPT DEPOSITS - TOWN COURT

The Town Court received checks and/or money orders as restitution payments in the name of the victim. These checks or money orders were forwarded directly to the victim without depositing them into the Court's bank account. If payments for restitution were remitted by checks or money orders made payable to the Town of Merrillville they were cashed by the Town Court from current cash collections and cash payments were made to the victim.

TOWN OF MERRILLVILLE  
EXAMINATION RESULTS AND COMMENTS  
(Continued)

The Town Court issued checks to defendants for the release of bonds. Once the bond release checks were written, the Town Court would cash those checks for the defendants from current cash collections.

In both of these instances, the Town Court did not deposit the funds in the same form in which they were received.

Receipts shall be issued and recorded at the time of the transaction; for example, when cash or a check is received, a receipt is to be immediately prepared and given to the person making payment. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

IC 5-13-6-1(d) states in part: "A city or a town shall deposit funds not later than the next business day following the receipt of the funds in depositories selected by the city or town as provided in an ordinance adopted by the city or the town and approved as depositories of state funds."

Public funds shall be deposited in the same form in which they were received. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

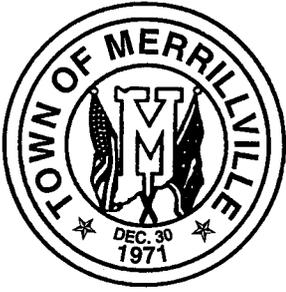
DELINQUENT EMERGENCY MEDICAL SERVICES ACCOUNTS RECEIVABLE

At December 31, 2008, the Town had \$1,909,549 in delinquent accounts, with service dates from January 3, 1999 through January 29, 2008. During 2008, the Town did not write-off any uncollectible accounts. The Town's Ordinance No. 04-23 states in part: "The Clerk-Treasurer on an annual basis shall submit to the Town Council of Merrillville a list of the uncollectible billings from the Emergency Medical Services. The Merrillville Town Council by majority vote shall waive these uncollectible billings." No past due notices were mailed in 2008; however, the Town mailed past due notices for delinquent accounts in March and May of 2009.

Each governmental unit is responsible for complying with the ordinances, resolutions, and policies it adopts. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

TOWN OF MERRILLVILLE  
EXIT CONFERENCE

The contents of this report were discussed on October 27, 2009, with Eugene M. Guernsey, Clerk-Treasurer; Joseph Shudick, Jr., Town Council President; Howard Fink, Town Administrator; and Diane Plikuhn, Bookkeeper. The officials response has been made a part of this report and can be found on pages 15 through 20.



# Town of Merrillville Court

7820 BROADWAY  
MERRILLVILLE, INDIANA 46410  
(219) 756-6185 • Fax (219) 756-1775

JUDGE GEORGE C. PARAS

November 2, 2008

## VIA CERTIFIED MAIL

Indiana State Board of Accounts  
Attn: Charlie Pride  
302 W Washington Street, Room E418  
Indianapolis, Indiana 46204-2738

### **RE: Response to State Board of Accounts Examination Results and Comments**

Dear Mr. Pride:

Please let this correspondence and attachments serve to confirm our recent conference regarding the recent examination results and comments released by the Indiana State Board of Accounts regarding the Merrillville Town Court (hereinafter referred to as "Court"). I have had an opportunity to further review these examination results/comments and have formed the opinion that the public defender position created by the Court is legitimate and proper under Indiana Statutory and Case Law.

### **FACTS**

On March 28, 2000, the Town of Merrillville adopted Ordinance Number 00-10 to establish a Court Public Defender Fund to account for the "Court Public Defender Funds and Expenditures". Since the adoption of the above-mentioned Ordinance, the Court has continued to supply a court-appointed public defender to protect the constitutional rights of indigent individuals who have been brought before the Court on criminal charges. On or about October 21, 2009, the Indiana State Board of Accounts has now provided results and comments basically questioning the use of public defenders by this Court.

### **STATEMENT OF LAW CONCERNING SUPPLEMENTAL FUNDING FOR PUBLIC DEFENDER SERVICES**

Under I.C. §33-40-3-5, provides as follows:

"A county may not have more than one (1) program providing court appointed legal services in the county, unless the fiscal body of the county agrees to allow additional court appointed legal services programs in the county."

## Page 2 - Response to State Board of Accounts Examination Results and Comments

Additionally, under I.C. §33-40-3-10(a) and (b), provide as follows:

“(a) *In a county with a population of more than four hundred thousand (400,000) and less than seven hundred thousand (700,000) in which a county public defender service is not provided*, a supplemental public defender services fund must be established in each city for providing funding for a public defender to represent indigent defendants in a city court.

(b) *Sections 2 through 9 of this chapter apply to the locally established supplemental public defender services fund established under subsection (a)*. However, funds otherwise required to be delivered to the county fiscal officer for maintaining a supplemental public defender services fund under this chapter shall be deposited with the local fiscal officer.”

### STATEMENT OF LAW CONCERNING COUNTY PUBLIC DEFENDER BOARDS

Under I.C. §33-40-7-1, provides as follows:

“This chapter does not apply to a county that:

- (1) contains a consolidated city;
- (2) has a population of:
  - (A) *more than three hundred thousand (300,000) but less than four hundred thousand (400,000)*;
  - (B) *more than two hundred thousand (200,000) but less than three hundred thousand (300,000)*; or
  - (C) *more than one hundred seventy thousand (170,000) but less than one hundred eighty thousand (180,000)*;
- (3) *has a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000),...*”

Additionally, under I.C. §33-40-7-5, provides as follows:

“(a) The board shall prepare a comprehensive plan that must include at least one (1) of the following methods of providing legal defense services to indigent persons:

- (1) Establishing a county public defender's office.
- (2) Contracting with an attorney, a group of attorneys, or a private organization.
- (3) Using an assigned counsel system of panel attorneys for case by case appointments under section 9 of this chapter.
- (4) In a county described in section 1(3) of this chapter, establishing a public defender's office for the criminal division of the superior court.

**Page 3 - Response to State Board of Accounts Examination Results and Comments**

(b) The plan prepared under subsection (a) shall be submitted to the Indiana public defender commission.”

**STATEMENT OF LAW CONCERNING BAIL AND BAIL PROCEDURE**

Under I.C. §35-33-8-3.2(b), provides as follows:

“(b) Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining under subsection (a)(2) to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-40-3.”

**STATEMENT OF LAW CONCERNING MISCELLANEOUS LEGAL SERVICES FOR INDIGENTS IN CRIMINAL ACTIONS**

Under I.C. §33-40-8-1, provides as follows:

“The judge of any court having criminal jurisdiction, except in those counties with a population of at least four hundred thousand (400,000), may contract with any attorney or group of attorneys admitted to practice law in Indiana to provide legal counsel for all or some of the poor persons coming before the court charged with the commission of a crime and not having sufficient means to employ an attorney to defend themselves.”

**STATEMENT CONCERNING INDIANA “HOME RULE”**

Under I.C. §36-1-3-5, provides as follows:

“(a) ... a unit may exercise any power it has to the extent that the power:  
(1) is not expressly denied by the Indiana Constitution or by statute;”

**STATEMENT CONCERNING JUDGE’S POWERS AND JURISDICTION**

Under I.C. §33-35-2-1(a), provides as follows:

“(a) A judge of a city or town court:  
(1) may adopt rules for conducting the business of the court;”

**STATEMENT CONCERNING INDIANA CONSTITUTION LAW AND "KIMSEY"**

Under Indiana Constitution Article 4, §23 provides as follows:

“In all the cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.”

Moreover, under Indiana Constitution Article 4, §22 provides as follows:

“The General Assembly shall not pass local or special laws:

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Regulating county and township business.

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Additionally, the Indiana Supreme Court has discussed the issue of “special legislation” within the well-known case entitled: Municipal City of South Bend vs. Kimsey, 781 N.E.2d 683 (Ind. 2003), where a landowner brought a remonstrance action to prevent the City of South Bend from annexing certain lands. The Indiana Supreme Court held that the annexation statute applicable only to a certain county and permitting a majority of landowners to block annexation by a municipality violated anti-logrolling provision of the state constitution prohibiting special legislation. The Indiana Supreme Court found that when analyzing a law under the provision of the state constitution prohibiting special legislation where a general law can be made applicable, a court must first determine whether the law is general or special: if the law is general, courts must then determine whether it is applied generally throughout the State; if it is special, courts must decide whether it is constitutionally permissible. Additionally the Indiana Supreme Court found that when determining whether a law is special or general, for purposes of the provision of the state constitution prohibiting special legislation where a general law can be made applicable, if there are characteristics of the locality that distinguish it for purposes of the legislation, and the legislation identifies the locality, it is "special legislation"; the identification of the locality may be by name, by the characteristic that justifies special legislation, or otherwise, for example, by population parameters that include only the locality. Finally, the Indiana Supreme Court found that the task is delicate and unpleasant, but the duty of the Court is imperative, and its authority is unquestionable, to declare any part of a statute null and void that expressly contravenes the provisions of the constitution, to which the legislature itself owes its existence.

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### ANALYSIS

In comparing our factual scenario to Kimsey, the following statutes: Supplemental Funding for Public Defender Services (I.C. §33-40-3 *et seq.*); County Public Defender Boards (I.C. §33-40-7 *et seq.*); Bail and Bail Procedure (I.C. §35-33-8 *et seq.*); Miscellaneous Legal Services for Indigents in Criminal Actions (I.C. §33-40-8 *et seq.*), which are applicable only to specific population areas or precluded by the same population areas are contrary to the anti-logrolling provisions of the Indiana Constitution prohibiting “special legislation”. Additionally, there are no characteristics within these specific population areas that distinguish them for purposes of this public defender legislation, thus making it “special legislation”. The duty of any Court is imperative, and its authority is unquestionable, to declare I.C. §§33-40-3 *et seq.*; 33-40-7 *et seq.*; 35-33-8 *et seq.*; 33-40-8 *et seq.* null and void when those statutes expressly contravene the provisions of Indiana Constitution Article 4, §22 and §23 as “special legislation”.

Furthermore, I.C. §36-1-3 *et seq.* (also referred to as “Home Rule”), is applicable to all governmental units, including Town government. Under “Home Rule”, the Town and Town Court may exercise any power it has to the extent that the power is not expressly denied by the Indiana Constitution or by statute. As a consequence of the above-mentioned public defender legislation being unconstitutional, the Town was justified in adopting Ordinance Number 00-10 to establish a Court Public Defender Fund to account for the “Court Public Defender Funds and Expenditures” along with any other Ordinances creating the position of public defender within the Town. The Town and Town Court continue to operate under its “Home Rule” powers when employing public defenders to protect the constitutional rights of indigent individuals who have been brought before the Court on criminal charges.

Moreover, I.C. §33-35-2 *et seq.* (also referred to as “Judicial Powers”) provides this Town Court the ability to adopt rules for conducting its business. This Town Court is of the opinion that there is no more important business than employing a public defender to protect the constitutional rights of indigent individuals who have been brought before the Court on criminal charges.

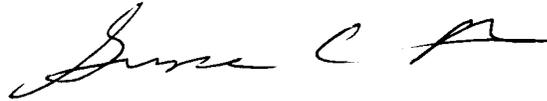
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**CONCLUSION**

In conclusion, I.C. §§33-40-3 *et seq.*; 33-40-7 *et seq.*; 35-33-8 *et seq.*; 33-40-8 *et seq.* must be considered “special legislation” as defined under Kimsey and Indiana Constitutional Law, hence being unconstitutional in nature. Moreover, I.C. §36-1-3 *et seq.* allowed the Town to adopt Ordinance Number 00-10 and any other Ordinance creating the position of public defender within the Town. The Town and Town Court are continuing to operate under its “Home Rule” and “Judicial Powers” authority when employing public defenders to protect the constitutional rights of indigent individuals who have been brought before the Court on criminal charges. Thus, by identifying an unconstitutional law with blatant deficiencies the proper action for the Town and Town Court was to undertake the employ of public defenders within the Town Court consistent with I.C. §§36-1-3 *et seq.* and 33-35-2 *et seq.*

I trust the foregoing satisfies your request for response. If you have questions please contact the undersigned. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "George C. Paras". The signature is fluid and cursive, with a long horizontal stroke at the end.

George C. Paras, Judge  
MERRILLVILLE TOWN COURT