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

AUDIT REPORT
OF
BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY, INDIANA
January 1, 2008 to December 31, 2008



FILED
06/18/2010

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COUNTY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
President of the Board of County Commissioners	M. Edward Meyer	01-01-08 to 12-31-10
President of the County Council	David Abbott Jack A. Coffman	01-01-08 to 12-31-09 01-01-10 to 12-31-10



STATE OF INDIANA
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TO: THE OFFICIALS OF CLARK COUNTY

We have audited the records of the Board of County Commissioners for the period from January 1, 2008 to December 31, 2008, 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 Clark County for the year 2008.

STATE BOARD OF ACCOUNTS

May 19, 2010

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY
AUDIT RESULTS AND COMMENTS

INTERNAL CONTROLS OVER FINANCIAL TRANSACTIONS AND REPORTING

We noted several deficiencies in the internal control system of the County related to financial transactions and reporting (see subsequent Audit Results and Comments). We believe the following deficiencies constitute material weaknesses:

1. **Preparing Financial Statements:** Effective internal control over financial reporting involves the identification and analysis of the risks of material misstatement to the County's audited financial statements and then determining how those identified risks should be managed. The County has not identified risks to the preparation of reliable financial statements and as a result has failed to design effective controls over the preparation of the financial statements to prevent or detect material misstatements, including notes to the financial statements.
2. **Monitoring of Controls:** Effective internal control over financial reporting also requires the County Board of Commissioners to monitor and assess the quality of the County's system of internal control. The County Board of Commissioners has not performed either an ongoing or separate evaluation of their system of internal controls. The failure to exercise their oversight responsibility places the County at risk that controls may not be designed or operating effectively to provide reasonable assurance that controls will prevent or detect material misstatements in a timely manner. Additionally, the County has no process to identify or communicate corrective actions to improve controls.

Governmental units should have internal controls in effect which provide reasonable assurance regarding the reliability of financial information and records, effectiveness and efficiency of operations, proper execution of management's objectives, and compliance with laws and regulations. Among other things, segregation of duties, safeguarding controls over cash and all other assets and all forms of information processing are necessary for proper internal control.

Controls over the receipting, disbursing, recording, and accounting for the financial activities are necessary to avoid substantial risk of invalid transactions, inaccurate records and financial statements and incorrect decision making. (Accounting and Uniform Compliance Guidelines Manual for County Auditors of Indiana, Chapter 14)

LANDFILL CAPITAL IMPROVEMENTS NOT BID BY COUNTY

Clark County, along with Floyd County, are the owners, as tenants in common, of real estate located in Clark County and comprised of what is commonly referred to as the Clark-Floyd Landfill (Landfill). The Landfill is used for refuse disposal and is operated by the Clark-Floyd Landfill, LLC (Operator), a private company, through a franchise and license agreement with Clark and Floyd Counties.

Clark County administers a Landfill Improvement Fund that receives tipping fees approved jointly by the Boards of Commissioners of Clark and Floyd Counties. The fees are collected and remitted by the Operator to Clark County.

Payments totaling \$656,783 were made to Clark-Floyd Landfill, LLC from the Landfill Improvement Fund as follows:

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY
AUDIT RESULTS AND COMMENTS
(Continued)

Year	Amount
2008	\$ 330,013
2009	326,770
	\$ 656,783

Documentation presented for audit showed that the Operator solicited bids and awarded a contract for a new cell development project. The payments reported in the above schedule were reimbursements made to the Operator for a new cell development project.

We noted the following regarding the County reimbursing the Operator for a new cell development project:

1. The new cell development project increased the capacity for refuse disposal at the Landfill and represents a capital improvement as defined in the Franchise and License Agreement Supplemental Agreement No. 1, Section II, Part C1 that states in part the following:

"County Expenses as Estimates. Exhibit D itemizes a series of 'County Expenses' comprised of three components, 'Required Capital Improvement Project Over Years with their Estimated Project Costs', 'Estimated Land Acquisition Expense', and 'Annual Eng., Misc. Contour Update' costs (referred to herein after collectively as the "Landfill Improvement Costs') . . . "

Exhibit D shows that cell construction is part of "County Expenses".

The Board of County Commissioners did not solicit bids and award contracts for the new cell development project at the Landfill.

IC 36-1-12-2 states in part:

"As used in this chapter, "public work" means the construction, reconstruction, alteration, or renovation of a public building, airport facility, or other structure that is paid for out of a public fund or out of a special assessment. The term includes the construction, alteration, or repair of a highway, street, alley, bridge, sewer, drain, or other improvement that is paid for out of a public fund or out of a special assessment. . . ."

IC 36-1-12-4 states in part:

"(a) This section applies whenever the cost of a public work project will be . . . at least fifty thousand dollars (\$50,000) . . .

(b) The board must comply with the following procedure:

- (1) The board shall prepare general plans and specifications describing the kind of public work required, but shall avoid specifications which might unduly limit competition. . . .

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY
AUDIT RESULTS AND COMMENTS
(Continued)

- (2) The board shall file the plans and specifications in a place reasonably accessible to the public, which shall be specified in the notice required by subdivision (3).
 - (3) Upon the filing of the plans and specifications, the board shall publish notice in accordance with IC 5-3-1 calling for sealed proposals for the public work needed. . . ."
2. The franchise and license agreement between Clark and Floyd Counties and the Operator did not provide for reimbursements to be made to the Operator for capital improvement costs incurred at the Landfill and no separate written contract was presented for audit.

Payments made or received for contractual services should be supported by a written contract. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

LANDFILL CONTRACT WITH FLOYD COUNTY

Presented for audit was a contract dated November 17, 1992, between the Clark County Board of County Commissioners and the Floyd County Board of Commissioners that provided for the distribution of fees received from the operation of the landfill. The contract provides for the payment of a percentage of excess revenues to Floyd County. However, ledgers of disbursements for the period of January 1, 2005 through December 31, 2008, did not show any payments being made to Floyd County during this period.

No written contract or contract amendment was presented for audit showing that Floyd County was not due a percentage of excess revenues. No documentation was presented for audit showing that the change in contract provisions was approved in the minutes of the Clark County Board of County Commissioners.

M. Edward Meyer, President of the Board of County Commissioners, during the year 2008, stated that a verbal agreement was made with Floyd County not to pay Floyd County any fees so the fees generated at the landfill would be used exclusively for the landfill.

Payments made or received for contractual services should be supported by a written contract. Each governmental unit is responsible for complying with the provisions of its contracts. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

IC 5-14-1.5-4(b) states:

"As the meeting progresses, the following memoranda shall be kept:

- (1) The date, time, and place of the meeting.
- (2) The members of the governing body recorded as either present or absent.
- (3) The general substance of all matters proposed, discussed, or decided.

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY
AUDIT RESULTS AND COMMENTS
(Continued)

- (4) A record of all votes taken, by individual members if there is a roll call.
- (5) Any additional information required under IC 5-1.5-2-2.5."

FAILURE TO APPROPRIATE NEW FUND

The Board of County Commissioners, by statute, is responsible for the construction, management, and oversight of the county's jail facilities. Costs for the operation of this facility are paid from the County's General fund which includes, but is not limited to, the cost of staffing, utilities, and housing of prisoners. Services are also provided through the jail facilities to outside Federal, State and local entities for the housing of prisoners and housing related expenses. The County bills these Federal, State and local entities for these services and historically had receipted these monies into the fund from which the costs were paid, the General Fund.

On January 25, 2007, the Board adopted Ordinance 3-2007 creating the Clark County Adult and Juvenile Facilities Usage Fund. The Fund as established had no financial activity until the year 2008. Based on the ordinance, funding will be all monies received from external government agencies (Federal, State, local or other) for rental of space (housing of prisoners) in the adult jail or juvenile detention center and other reimbursements received by the County Sheriff. The ordinance further states that the Fund may be expended, only upon approval by the Board in writing, without the necessity of further appropriation for County facility repairs, maintenance, oversight, equipment, and any other public expenditure deemed necessary to the public interest by the Board.

Reimbursements received during the year 2008 and receipted into the Clark County Adult and Juvenile Facilities Usage Fund from Federal, State, and local entities for the housing of prisoners and prisoner related costs totaled \$358,273. Disbursements made without appropriation from this fund were as follows:

Description	Amount
Sheriff's Dept./Jail Facility operational costs and equipment	\$ 155,690
Other County disbursements:	
County election costs	10,975
Paving and stripping of Greater Clark County Schools parking lot used by the Sheriff's Department	13,485
Commissioners insurance - liability, property, crime & workmen's comp.	89,670
Commissioners care of inmates in institutions	5,135
Total other County disbursements	119,265
Total fund disbursements	\$ 274,955

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY
AUDIT RESULTS AND COMMENTS
(Continued)

IC 36-2-5-2(b) states:

"The county fiscal body shall appropriate money to be paid out of the county treasury, and money may be paid out of the treasury only under an appropriation made by the fiscal body, except as otherwise provided by law."

There may be other laws under which funds may be disbursed without appropriation; however, appropriations are required before disbursements may be made from any fund subject to the Budget Laws unless specific authority to disburse without appropriation is provided by law. (The County Bulletin, April 2000)

It should be noted that establishing a new fund by diverting revenues that would normally go into the county general fund or by transferring by appropriation from the general fund to the new fund creates a possible future problem. After creating and funding the new fund, if the county appeals to the local government tax control board of the Local Board of Government Finance for an excessive levy (pursuant to Indiana Code 6-1.1-18.5-11 et seq), the control board may insist that any balance or balances of such funds must be transferred to the county general fund and considered prior to any anticipated relief from the control board. (The County Bulletin, January 2001)

DISBURSEMENTS MADE FROM LANDFILL FUNDS WITHOUT APPROPRIATION

The Board of County Commissioners approved disbursements totaling \$2,353,276 from the Landfill Improvements Fund and \$259,401 from the Landowners Liability and Contingency Fund during the year 2008. Disbursements from both of these funds were made without obtaining an appropriation from the County Council.

IC 36-2-5-2(b) states:

"The county fiscal body shall appropriate money to be paid out of the county treasury, and money may be paid out of the treasury only under an appropriation made by the fiscal body, except as otherwise provided by law."

CUMULATIVE CAPITAL DEVELOPMENT FUND DISBURSEMENTS

The Board of County Commissioners approved the following disbursements from the Cumulative Capital Development Fund during the year 2008:

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY
AUDIT RESULTS AND COMMENTS
(Continued)

Disbursements	Amount
Advertising	\$ 1,006
Animal Control supplies	1,752
Legal services	6,594
Burial of veterans	7,800
Commissioners membership fee	9,217
Commissioners indirect cost study	9,500
Utilities	93,150
Insurance	99,815
 Total	 \$ 228,834

We noted the following regarding the above disbursements:

1. The Board of County Commissioners did not obtain an appropriation from the County Council.

IC 36-2-5-2(b) states:

"The county fiscal body shall appropriate money to be paid out of the county treasury, and money may be paid out of the treasury only under an appropriation made by the fiscal body, except as otherwise provided by law."

2. Ordinance 6-2004, that established the Cumulative Capital Development Fund, did not authorize the type of disbursements reported in the above schedule.

Each governmental unit is responsible for complying with the ordinances, resolutions, and policies it adopts. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY
EXIT CONFERENCE

The contents of this report were discussed on May 19, 2010, with M. Edward Meyer, President of the Board of County Commissioners. The official response has been made a part of this report and may be found on pages 11 through 13.

The contents of this report were also discussed on May 19, 2010, with Jack A. Coffman, President of the County Council.

**BOARD OF COMMISSIONERS
OF CLARK COUNTY, INDIANA**

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M. Edward Meyer, President
Mike Moore
Les Young

Greg Fifer, County Attorney
Hyun Lee, Engineer

June 8, 2010

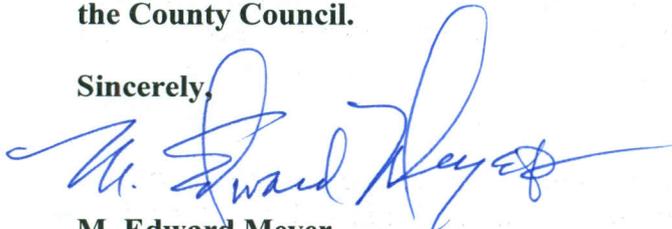
STATE BOARD OF ACCOUNTS
302 West Washington Street
4th Floor, Room E418
Indianapolis, IN 46204

Re: Disbursements Made From Landfill Funds Without
Appropriation

It is the position of the County Commissioners that the Landfill is a sanitary Landfill Franchise and therefore would be directed into separate funds under the "Home Rule Statutes." We would respect the position of the attorney's opinions that were previously supplied.

Specifically addressing disbursements made from Landfill Funds without Appropriations, it is the Commissioners' opinion and State Examiner, Donald L. Euratte, of the State Board of Accounts attesting to Indiana Code 36-2-2-23; "... or otherwise designated and determined by the Board of Commissioners..." We feel the law clearly states that the funds can and were designated and determined to be used for construction at the landfill and need not be appropriated by the County Council.

Sincerely,



M. Edward Meyer
President, Clark County Commissioners

EM/em

Attachment: State Board of Accounts Letter dated September 19, 1994



STATE OF INDIANA

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STATE BOARD OF ACCOUNTS

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September 19, 1994

File: County-Clark

Mr. Gregory Isgrigg
President
Board of Commissioners of Clark County
Room 308
City County Building
Jeffersonville, Indiana 47130

Re: Ambulance Service

Dear Mr. Isgrigg:

This is in reply to your letter received and meeting held in this office on September 19, 1994, regarding the use of Landfill Franchise fees for Ambulance Services. Thank you for the courtesy you extended to us and for providing the additional information needed in which we can base our response.

Let me begin by stating that the letter of September 1, 1994, to Mr. Keith Groth, County Auditor, was based upon his inquiry of August 31, 1994. The response with the audit position that landfill monies may not be used for ambulance services was based solely on the information in his letter. As mentioned in that response our audit position did not or could not take into consideration the agreements or ordinances at the local level. Our response also recommended the county attorney be contacted for guidance in this matter.

We have reviewed the Franchise Agreement along with the letters of opinion from the three attorneys included in the information provided by you. It is our understanding that the Sanitary Landfill Franchise and the license dated December 6, 1982 was entered into pursuant to Indiana Code 36-2-2-23. The license states in part that the maintenance fee "... be deposited in a separate fund to be maintained by Clark County, Indiana, the same to be utilized for the sole purpose of the maintenance of the county road and bridges giving access to the landfill site described therein, or as otherwise designated and determined by the Board of Commissioners... ." Accordingly, the monies received from the license could be governed by the Home Rule provisions found in Indiana Code 36-1-3. We would respect the position of the attorneys during the course of our audit.

Mr. Gregory Isgrigg
September 19, 1994
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We again thank you for the additional information in which to base our audit position. This should not be construed to be a legal opinion. Should you have any questions please contact Mrs. Pennycuff or Mr. Hartman of this office at (317) 232-2512.

Very truly yours,

Donald L. Euratte, C.P.A.
State Examiner

BAH:njp

cc: Data File - Clark County
Mr. Keith Groth, Clark County Auditor
Mr. James Gutting, Barnes & Thornburg

RECEIVED

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