

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, 2009 to December 31, 2009



FILED

12/14/2010

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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	Joseph Shudick, Jr. Richard Hardaway	01-01-09 to 12-31-09 01-01-10 to 12-31-10



STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

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

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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, 2009 to December 31, 2009. 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, 2009, 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

September 27, 2010

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, 2009

	Cash and Investments 01-01-09	Receipts	Disbursements	Cash and Investments 12-31-09
Governmental Funds:				
General	\$ 347,196	\$ 15,451,863	\$ 15,230,976	\$ 568,083
Motor Vehicle Highway	(156,745)	932,489	917,077	(141,333)
Local Road and Street	69,382	338,980	381,183	27,179
Park and Recreation	42,978	310,475	239,037	114,416
Town Party Donation	218	-	-	218
Town Donations	6,771	39,183	11,479	34,475
Parks Nonreverting	21,144	30,153	30,500	20,797
EMS/Ambulance	85,254	44,900	151,034	(20,880)
Emergency Management Agency	(4,134)	100	1,181	(5,215)
Court Probation	6,084	43,290	38,706	10,668
Public Defender Fees	20,525	10,676	7,375	23,826
Record Perpetuation	(318)	9,948	6,135	3,495
Veterans Memorial	26,204	9,512	31,174	4,542
Engineering Fees	24,130	22,587	35,200	11,517
Noxious Weeds Nonreverting	9,221	3,163	-	12,384
Landscaping Escrow	10,000	6,500	16,500	-
Park Impact Fees	59,024	70,033	59,220	69,837
Firefighters Equipment	16,188	15,870	22,648	9,410
Police Equipment	159,842	150,892	113,932	196,802
Police Donation	3,290	8,261	2,465	9,086
Law Enforcement Continuing Education	26,772	50,814	21,327	56,259
Economic Development Commission	190	-	-	190
Special Projects	364	-	-	364
Police Special Grant	6,770	29,278	27,131	8,917
Tourism	4,883	4,773	9,000	656
Property Seizure	45,129	14,317	45,195	14,251
Off Track Betting Donation	(4,488)	89,400	80,574	4,338
New Town Hall Donation	743	-	-	743
Park Donation	7,733	101	133	7,701
Cumulative Capital Improvement	100,454	93,707	143,710	50,451
Cumulative Capital Development	227,761	384,482	290,455	321,788
Merrillville Road TIF	360,675	751,351	838,639	273,387
Merrillville Road TIF Debt Service	553,654	1,455,470	1,487,000	522,124
93rd Avenue Redevelopment	-	-	-	-
GO Bond Debt Service	243,417	686,293	688,288	241,422
Bridgewood Estates Phase 2	75,000	-	74,061	939
Certified Technology Park	-	844,830	844,830	-
Ameriplex at Crossroads	-	-	-	-
Broadway TIF	18,144	278,977	139,605	157,516
Mississippi Street TIF Debt Service	592,957	1,218,944	1,277,255	534,646
Mississippi Street TIF Project	-	100,000	84,104	15,896
Mississippi Street TIF Debt Service Reserve	329,449	426,889	160,000	596,338
TIF Debt Service Reserves	192,167	4,963	-	197,130
Fire and Hazmat	33,037	125,531	136,265	22,303
Recycling Grant	46,587	193,427	184,560	55,454
Bike Trail Grant	179,160	600,000	681,840	97,320
Casino Gaming	269,982	452,685	369,228	353,439
RDC Bonds 2005	135,012	60,112	1,200	193,924
RDC Bonds 2005 Debt Service	428,680	1,124,919	1,068,503	485,096
County Reimbursement/Welfare	-	143,046	-	143,046
Proprietary Fund:				
Health Insurance Escrow	71,959	1,442,104	1,511,786	2,277
Stormwater Operating	-	1,900	64,447	(62,547)
Fiduciary Funds:				
Payroll	207,492	5,881,043	5,783,831	304,704
Cable Escrow	194,671	195	-	194,866
Employees Insurance Benefits Withholding	2,382	1,101,356	1,102,190	1,548
Police Officers' Pension	(243,997)	535,835	419,438	(127,600)
Police Pension - PERF	34,080	141,417	129,843	45,654
Town Court	363,152	1,608,957	1,619,794	352,315
Totals	\$ 5,250,225	\$ 37,345,991	\$ 36,580,054	\$ 6,016,162

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. All property taxes collected by the County Treasurer and available for distribution were distributed to the Town on or prior to December 31 of the year collected.

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

Property Taxes

Due to delays caused by trending of assessments, the assessed valuations of Lake County were not finalized by February 15, 2010, as required. Therefore, the 2009 pay 2010 property tax rates and levies, as well as related budget orders for 2010, were not established. The County issued a provisional billing due May 10, 2010, based upon the 2008 pay 2009 tax rates. The County has not been advised when the tax rates for 2009 pay 2010 will be established.

Tax Anticipation Warrants

The Town received tax anticipation warrants on December 31, 2009, in the amount of \$2,600,000, which are due June 30, 2010, and on January 15, 2010, in the amount of \$4,800,000, which are due December 31, 2010.

Judgment Bonds

The Town issued judgment bonds on April 29, 2010, for \$540,000 in order to pay delinquent utility bills.

TOWN OF MERRILLVILLE
 SUPPLEMENTARY INFORMATION
 SCHEDULE OF CAPITAL ASSETS
 For The Year Ended December 31, 2009

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	69,503,152
Buildings	3,567,134
Improvements other than buildings	1,834,785
Machinery and equipment	8,934,652
Construction in progress	<u>-</u>
Total governmental activities, capital assets not being depreciated	<u>\$ 90,089,131</u>

TOWN OF MERRILLVILLE
 SUPPLEMENTARY INFORMATION
 SCHEDULE OF LONG-TERM DEBT
 December 31, 2009

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	\$ 150,068	\$ 57,770
10 Police Cars, Leaf Collector	84,487	32,618
2 Trucks, 4 Dump Trucks, Equipment	238,147	92,342
12 Police Cars	82,970	82,970
Notes and loans payable:		
Merrillville Revenue Note	565,000	175,000
Bonds payable:		
General obligation bonds:		
RDC 2005	7,405,000	550,000
GO 2004	3,705,000	400,000
Revenue bonds:		
Merrillville Rd TIF	2,110,000	70,000
Mississippi St TIF	8,595,000	315,000
Total governmental activities debt	<u>\$ 22,935,672</u>	<u>\$ 1,775,700</u>

TOWN OF MERRILLVILLE
EXAMINATION RESULTS AND COMMENTS

OVERDRAWN FUND BALANCES

The cash balances of the following funds were overdrawn December 31, 2009:

Fund	Balance
Police Officers' Pension	\$ (127,600)
Motor Vehicle Highway	(141,333)
Stormwater Operating	(62,547)
EMS/Ambulance	(20,880)
Emergency Management Agency	(5,215)

The fund 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 audit indicated the following expenditures in excess of budgeted appropriations:

Fund	Excess Amount Expended
Motor Vehicle Highway	\$ 101,306
Local Road and Street	109,083

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."

TEMPORARY TRANSFER OF FUNDS

Temporary loans were made in 2005 for \$165,000 from the Cumulative Capital Development Fund to the Cumulative Capital Improvement Fund. Also \$260,000 was temporarily transferred from the 93rd Avenue Redevelopment Fund to the RDC Bonds 2005 Debt Service Fund; however, these two funds are now dormant. The 2005 temporary loans had not been repaid as of December 31, 2009.

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. . . ."

TOWN OF MERRILLVILLE
EXAMINATION RESULTS AND COMMENTS
(Continued)

"(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."

DELINQUENT EMERGENCY MEDICAL SERVICES ACCOUNTS RECEIVABLE

At December 31, 2009, the Town had \$1,903,655 in delinquent accounts, with service dates from January 3, 1999 through January 29, 2008. During 2009, 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 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 bond after payment of court costs and other fees to be paid to the Court Public Defender Fund. At December 31, 2009, the Court Public Defender Fund cash balance was \$23,825.81. There is no statutory authority for the Town Court of Merrillville to have a supplemental public defender services fund. IC 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. IC 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:

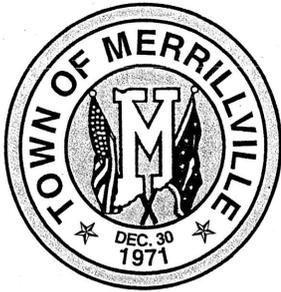
"The judge of any court having criminal jurisdiction, except in those counties with a population of at least four hundred thousand (400,000), may contract with any attorney or group of attorneys admitted to practice law in Indiana to provide legal counsel for all or some of the poor persons coming before 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."

TOWN OF MERRILLVILLE
EXIT CONFERENCE

The contents of this report were discussed on September 27, 2010, with Eugene M. Guernsey, Clerk-Treasurer, and Richard Hardaway, President of the Town Council. The official response has been made a part of this report and may be found on pages 13 through 18.



Town of Merrillville Court

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

JUDGE GEORGE C. PARAS

September 24, 2010

VIA HAND DELIVERY

Indiana State Board of Accounts
302 W Washington Street, Room E418
Indianapolis, Indiana 46204-2765

Attn: Mary Jo Small, Field Examiner for Lake County

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

Dear Ms. Small:

Please let this correspondence 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.

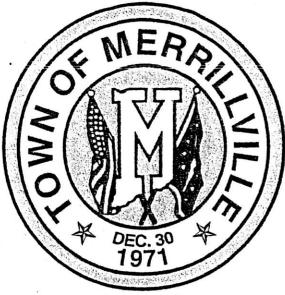
FACTS

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."



Town of Merrillville Court

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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:

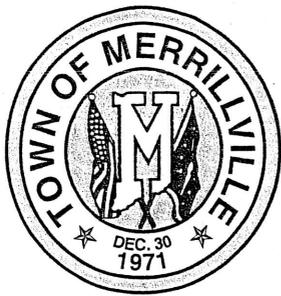
“This chapter does not apply to a county that:

- (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.



Town of Merrillville Court

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(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;”



Town of Merrillville Court

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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."

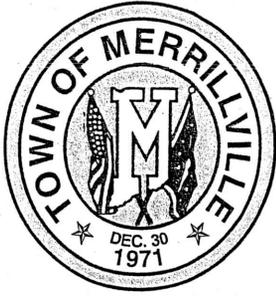
Moreover, under Indiana Constitution Article 4, §22 provides as follows:

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

Regulating county and township business.

***"

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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JUDGE GEORGE C. PARAS

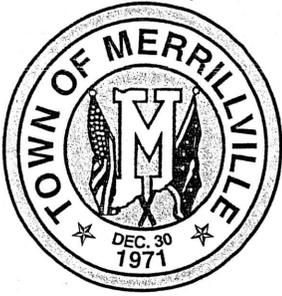
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ANALYSIS

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.



Town of Merrillville Court

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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,

George C. Paras, Judge
MERRILLVILLE TOWN COURT