

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

AUDIT REPORT

OF

COUNTY SHERIFF

LAKE COUNTY, INDIANA

January 1, 2009 to December 31, 2009



**FILED**

01/07/2011



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COUNTY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Sheriff	Rogelio "Roy" Dominguez	01-01-07 to 12-31-10
President of the County Council	Larry Blanchard Thomas O'Donnell	01-01-09 to 12-31-09 01-01-10 to 12-31-10
President of the Board of County Commissioners	Roosevelt Allen, Jr. Frances DuPey	01-01-09 to 12-31-09 01-01-10 to 12-31-10



**STATE OF INDIANA**  
AN EQUAL OPPORTUNITY EMPLOYER

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TO: THE OFFICIALS OF LAKE COUNTY

We have audited the records of the County Sheriff for the period from January 1, 2009 to December 31, 2009, 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 Lake County for the year 2009.

STATE BOARD OF ACCOUNTS

September 20, 2010

COUNTY SHERIFF  
LAKE COUNTY  
AUDIT RESULTS AND COMMENTS

OVERTIME – SALARIED EMPLOYEES

In 2008, 2009, and 2010, the Sheriff's Department paid overtime to high ranking salaried personnel that was not permitted by local policy or agreements. Most of the Sheriff Department employee's compensation and terms of employment are governed by a "Collective Bargaining Agreement." However, several high ranking officers are excluded from the agreement.

The "Collective Bargaining Agreement" between the County of Lake, and the Fraternal Order of Police, Chris Anton Lodge #125, and the Lake County Police Association, Local #72 AFL/CIO, Article I, Recognition, Section 1.1, states the following:

"The Employer hereby recognizes the Indiana Fraternal Order of Police Labor Council, Inc. on behalf of Fraternal Order of Police Lodge #125 and the Lake County Police Association #72 as the sole and exclusive bargaining representatives with respect to wages, hours and other terms and conditions of employment for all permanent sworn employees of the Lake County Police Department excluding employees in "upper level policy making positions" as defined by Indiana State Statute."

IC 36-8-1-12 defines "Upper Level policymaking position": "Upper level policymaking position" refers to the position held by the police chief or fire chief and to each position held by members of the police department or fire department in: (2) the next two (2) ranks and pay grades immediately below the chief, if the authorized size of the department is (A) more than fifty (50) members in the case of a police department."

At the Lake County Sheriff Department, the next two ranks and pay grades are the Assistant Chief and the Commanders.

Since these officers are not covered by the "Collective Bargaining Agreement", the "Lake County Employee Handbook" was consulted regarding the payment of overtime and compensatory (comp) time for upper level policymaking salaried employees. The "Lake County Employee Handbook", Uniform Application of this Handbook, states:

"It is the intent of the County Council to adopt an employee handbook that applies uniformly to all divisions of government except the Judiciary (which are employees of the Indiana 31st Judicial District), Park Department, merit correctional officers and merit police officers, each of which maintain their own handbooks or are covered by collective bargaining."

A handbook for the merit police officers has not been approved by the County Council.

The "Lake County Employee Handbook", states: "Exempt - A full-time "exempt" employee is a salaried employee who is exempt from the overtime and/or compensatory time requirements of the Fair Labor Standards Act (FLSA). An exempt employee has certain decision-making responsibilities and meets other criteria of the federal act."

The following table lists the officers and the amount of overtime paid in 2008, 2009, and as of August 31, 2010; that based on the above references, were not entitled to compensation for overtime:

COUNTY SHERIFF  
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AUDIT RESULTS AND COMMENTS  
(Continued)

	<u>2008</u>	<u>2009</u>	<u>As of August 31, 2010</u>	<u>Totals</u>
Chief Kuyachich	\$ 4,659	\$ -	\$ -	\$ 4,659
Assistant Chief Kumstar	10,594	10,499	130	21,223
Commander Reilly	7,967	306	-	8,273
Commander Smith	483	1,507	-	1,990
Commander Ramirez	-	-	892	892
Commander Spurlock	4,613	4,816	1,471	10,900
Total overtime paid	<u>\$28,316</u>	<u>\$17,128</u>	<u>\$ 2,493</u>	<u>\$47,937</u>

We recommended that the County take appropriate action to clarify the policy for compensation of overtime and/or compensatory (comp) time for these salaried positions.

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)

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 Counties of Indiana, Chapter 1)

OVERTIME CALCULATION

The Assistant Chief's overtime was incorrectly entered into the payroll system. Hours worked in excess of an eight (8) hour day were recorded as compensatory (comp) time, earned at time and a half the number of hours worked. These comp time hours were later submitted and entered as overtime hours and instead of being paid at straight time, were paid at time and a half. This caused the time worked to be multiplied by time and a half, twice. Assistant Chief Kumstar was overpaid \$1,958.92, \$3,478.42, and \$43.17, for 2008, 2009 and 2010, respectively. Total overpayment was \$5,480.51. Assistant Chief Kumstar approved his own overtime. The overpayment of overtime has not been corrected or recovered. (This overpayment of overtime is part of, and included in the amount, of overtime paid to "Upper Level Policymaking Position" employees noted in the prior comment.) We recommended that the County pursue avenues to recapture the overpayment of overtime.

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. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

The "Lake County Employee Handbook" states: "All overtime must be approved and authorized by an employee's department head or supervisor. Under no circumstances may an employee authorize his/her own overtime." 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)

COUNTY SHERIFF  
LAKE COUNTY  
AUDIT RESULTS AND COMMENTS  
(Continued)

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 Counties of Indiana, Chapter 1)

EMPLOYEE SERVICE RECORDS

The following deficiencies were noted on the "Employee Service Record" for two "Upper level policymaking position" Sheriff Department employees:

1. Vacation and sick leave balances, carried from 2009 to 2010, exceeded the allowable amount per the "Lake County Employee Handbook".
2. Earned vacation days posted to the "Employee Service Record" exceeded the allowable amount based on years of service.
3. Heading information, such as hire date and classification (job position), were not completed on the "Employee Service Record".

The "Lake County Employee Handbook" states:

"Generally vacation time must be taken in the year that it was provided. However, an employee with the approval of their department head may carry over up to one week of vacation provided that the time is used prior to April 30th of the following year."

"Employees may carry up to six (6) days of unused sick/personal leave annually. All leave carried over may be used as sick leave only."

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)

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 Counties of Indiana, Chapter 9)

CONTRACTUAL EMPLOYEES - SHERIFF GRANTS

Two county employees had contractual responsibilities for grant administration in addition to being full-time county employees. Each employee was issued a Form W-2, Wage and Tax Statement, and a Form 1099-Misc, Miscellaneous Income, for their services.

Time records were available for the employee's regular full time position; however, time records were not presented for the contractual arrangement. The employees did submit detailed claims for services performed, however, documentation was not provided to determine if those services were performed outside of the county workday. A recent Internal Revenue Service (IRS) audit noted that employees cannot be treated as both a contractor and an employee for the same employer. The contractual arrangement circumvents the employer's payroll tax liability.

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Furthermore, one of the employees did not have a written contract with the County for the additional grant services provided.

IC 5-11-9-4 requires that records be maintained showing which hours are worked each day for employees employed by more than one political subdivision or in more than one position by the same public agency. This requirement can be met by indicating the number of hours worked on each Employee's Service Record, General Form No. 99 A and/or General Form No. 99B. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 5)

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 Counties of Indiana, Chapter 5)

Each governmental unit is responsible for compliance with all rules, regulations, guidelines, and directives of the Internal Revenue Service and the Indiana Department of Revenue. All questions concerning taxes should be directed to these agencies. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

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)

SHERIFF COMMISSARY EXPENDITURES

In 2009, the Sheriff's Commissary fund expended \$86,110 for the following items which did not meet statutory guidelines for Commissary disbursements:

<u>Description</u>	<u>Amount</u>
Charitable donations	\$ 46,501
Donation of back to school supplies	12,620
Scholarships	3,000
Advertising	5,885
Flowers	1,096
Parade banner and supplies	10,844
Chief's challenge	<u>6,164</u>
Total	<u>\$ 86,110</u>

County Council approval for these disbursements was not included in the Council minutes. The Council is the fiscal body under statute which has the ability to agree to certain commissary disbursements.

Additionally, supporting documentation for 3 out of 31 (10%) of claims (disbursements) tested was not presented for audit.

COUNTY SHERIFF  
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AUDIT RESULTS AND COMMENTS  
(Continued)

IC 36-8-10-21 states:

- "(a) This applies to any county that has a jail commissary that sells merchandise to inmates.
- (b) A jail commissary fund is established, referred to in this section as "the fund". The fund is separate from the general fund, and money in the fund does not revert to the general fund.
- (c) The sheriff, or his designee, shall deposit all money from commissary sales into this fund, which he shall keep in a depository designated under IC 5-13-8.
- (d) The sheriff, or his designee, at his discretion and without appropriation by the county fiscal body, may disburse money from the fund for:
- (1) merchandise for resale to inmates through the commissary;
  - (2) expenses for operating the commissary, including, but not limited to, facilities and personnel;
  - (3) special training in law enforcement for employees of the sheriff's department;
  - (4) equipment installed in the county jail;
  - (5) equipment, including vehicles and computers, computer software, communication devices, office machinery and furnishings, cameras and photographic equipment, animals, animal training, holding and feeding equipment and supplies, or attire used by an employee of the sheriff's department in the course of the employee's official duties;
  - (6) an activity provided to maintain order and discipline among the inmates of the county jail;
  - (7) an activity or program of the sheriff's department intended to reduce or prevent occurrences of criminal activity, including the following:
    - A. Substance Abuse.
    - B. Child Abuse.
    - C. Domestic Violence.
    - D. Drinking and Driving.
    - E. Juvenile Delinquency.
  - (8) expenses related to the establishment, operation, or maintenance of the sex and violent offender registry web site under IC 36-2-13-5.5; or
  - (9) any other purpose that benefits the sheriff's department that is mutually agreed upon by the county fiscal body and the county sheriff.

COUNTY SHERIFF  
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AUDIT RESULTS AND COMMENTS  
(Continued)

Money disbursed from the fund under this subsection must be supplemental or in addition to, rather than a replacement for regular appropriation made to carry out the purposes listed in subdivisions (1) through (8)."

All claims, invoices, receipts, accounts payable vouchers, including those presented to the governing body for approval in accordance with IC 5-11-10, should contain adequate detailed documentation. All claims, invoices, receipts, and accounts payable vouchers regarding reimbursement for meals and expenses for individuals must have specific detailed information of the names of all individuals for which amounts are claimed, including the nature, name, and purpose of the business meeting, to enable the governing body to authorize payment. Payments which do not have proper itemization showing the business nature of the claim may be the personal obligation of the responsible official, employee or other person for whom the claim is made. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

SHERIFF'S COMMISSARY LEDGER OF RECEIPTS, DISBURSEMENTS, AND BALANCES

The Sheriff's Department did not provide receipts, disbursements and balance reports semi-annually to the County Council as required by statute. This comment has appeared in prior reports.

Beginning in May 2009 a new accounting software system was used to record transactions for the Sheriff's Commissary Fund. The system was able to provide a "Bank Register Entries" report that included a detail of deposits and disbursements (checks) for the Commissary Fund. However, this report did not include cumulative totals for receipts or disbursements and did not provide current cash balances. General form No. 358, Ledger of Receipts, Disbursements, and Balances, was not in use and the current system and the related reports have not been approved by the State Board of Accounts for use by the Lake County Sheriff's Department. Reported financial activity for the Commissary Fund was obtained by abstracting bank activity.

IC 36-8-10-21, Sec. 21. (e), states: "The sheriff shall maintain a record of the fund's receipts and disbursements. The State Board of Accounts shall prescribe the form for this record. The sheriff shall semiannually provide a copy of this record of receipts and disbursements to the county fiscal body. The semiannual reports are due on July 1 and December 31 of each year."

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 Counties of Indiana, Chapter 1)

UNCLAIMED PROPERTY - CIVIL DIVISION AND INMATE TRUST

The Sheriff's Department Civil Division has \$11,600.95 in stale dated checks held in trust that are distributable but remain unclaimed. The Sheriff has not remitted this amount to the Indiana Attorney General's unclaimed property division as required by statute.

Unclaimed funds have not been remitted to the Attorney General since 2007. At December 31, 2007, the Sheriff's Inmate Trust Fund account had \$20,517.48 in unclaimed former inmates' funds. Research by Sheriff's employees to determine if there are additional inmate accounts that are unclaimed has not been performed in 2008 or 2009. Upon inquiry, it was stated that the Attorney General's office

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AUDIT RESULTS AND COMMENTS  
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will not accept the current format of the records of the sheriff's department; therefore, the sheriff has ceased transferring unclaimed funds to the unclaimed property division of the Attorney General. Changes in computer systems in October 2007 and May 2009 have also hampered the process of identifying unclaimed funds. Similar comments appeared in prior reports.

IC 32-34-1-20(c) states in part:

"Property that is held, issued, or owed in the ordinary course of a holder's business is presumed abandoned if the owner or apparent owner has not communicated in writing with the holder concerning the property or has not otherwise given an indication of interest in the property during the following times: . . . (7) For property held by a state or other government, governmental subdivision or agency, or public corporation or other public authority, one (1) year after the property becomes distributable . . ."

IC 32-34-1-26(a) states in part:

"A holder of property that is presumed abandoned and that is subject to custody as unclaimed property under this chapter shall report in writing to the attorney general concerning the property . . ."

IC 32-34-1-27(a) states: "Except as provided in subsections (b) (c), on the date a report is filed under section 26 of this chapter, the holder shall pay or deliver to the attorney general the property that is described in the report as unclaimed."

CONDITION OF RECORDS - SHERIFF CIVIL DIVISION

A computerized cash book is used to record receipts and disbursement activity, and cash balances. The computerized cash book for the Sheriff Civil Division was implemented in March 2007. At that time, a beginning cash balance was not posted to the computerized software system. In 2008, the Sheriff engaged a public accounting firm to determine the monthly balances and perform bank reconciliations for the years 2006-2007. The consultant's information and adjustments were not provided to the appropriate Sheriff's staff in order to adjust the computerized cash book's beginning balance. As a result, the cash balance in the cash book is inaccurate and has not been reconciled to the bank to verify that all activity is recorded and in the correct amounts.

At December 31, 2009, the Sheriff's Civil Department's cash book had a balance of \$30,889.07. However, the adjusted bank balance was \$241,368.89, resulting in an unidentified difference of \$210,479.52 (cash long).

IC 5-13-6-1(e) states in part: "All local investment officers shall reconcile at least monthly the balance of public funds, as disclosed by the records of the local officers, with the balance statements provided by the respective depositories."

At all times, the manual and/or 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 Counties of Indiana, Chapter 1)

COUNTY SHERIFF  
LAKE COUNTY  
AUDIT RESULTS AND COMMENTS  
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INMATE TRUST TRANSFER TO COMMISSARY

In 2009, the Sheriff's Department transferred \$200,000 (\$100,000 on September 15th and \$100,000 on November 9th) from the Inmate Trust bank account into the Jail Commissary bank account. The notation on the deposit was "Commission owed by PCS". PCS (Public Communications Services, Inc) was the sole telephone company used by inmates held in the jail. The Sheriff's Department earns a commission on all the telephone calls that inmates and their families purchased out of the inmate trust account. The telephone commission revenue had accumulated in the Inmate Trust bank account. The transfer of \$200,000 represented multiple years' telephone activity/revenue earned. However, supporting documentation for the calculation of the commission earned and transferred to the Jail Commissary account was not provided for audit, therefore, we were unable to determine if the proper amount was transferred.

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 Counties of Indiana, Chapter 1)

1099'S NOT ISSUED FOR SERVICES PAID OUT OF COMMISSARY

Two individuals were paid for personal services from the Jail Commissary Fund. Services provided were for employee wellness training and women's work release. The amounts paid were \$18,300 and \$3,425, respectively. Federal form 1099-MISC, Miscellaneous Income, was not issued as required. In addition, the individuals did not have a written contract with the County outlining the scope of the services to be provided.

Each governmental unit is responsible for compliance with all rules, regulations, guidelines, and directives of the Internal Revenue Service and the Indiana Department of Revenue. All questions concerning taxes should be directed to these agencies. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

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)

INMATE MEDICAL EXPENSES

Medical expenses incurred by an inmate are deducted from their respective inmate trust account. If an inmate does not have a balance in their trust account, the medical expense amount is accounted for in the outstanding medical debt category. A detail of the accounts that support the balance of this outstanding debt was not provided for audit. The balances are not written off after 30 days of discharge. If the inmate is re-incarcerated, the prior debt is sometimes reapplied to his account.

IC 11-10-3-5 (c) states in part:

"A person committed to the department is not required to make the copayment under subsection (b) if (1) the person does not have funds in the person's commissary account or trust account at the time the service is provided; (2) the person does not have funds in the

COUNTY SHERIFF  
LAKE COUNTY  
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(Continued)

person's commissary account or trust account within thirty (30) days after the service is provided; (3) the service is provided in an emergency; (4) the service is provided as a result of an injury received in the correctional facility; or (5) the service is provided at the request of the administrator of the correctional facility."

SOCIAL SECURITY ACCOUNT - SHERIFF

The Sheriff submits a listing of individuals in custody to the Social Security Administration. If the Social Security Administration determines that any of those individuals are currently receiving Supplemental Security Income (SSI) benefits, they will suspend these benefits and remit an incentive payment up to \$400 per individual to the Sheriff's Department. The funds remitted to the Sheriff's Department from the Social Security Administration are accounted for in a separate bank account held by the Sheriff's Department and used by the Sheriff's Department to pay miscellaneous expenses.

In regards to Social Security incentive payments to counties, "these payments should be transferred by the sheriff to the County Treasurer and quietus into the County General Fund." (The County Bulletin and Uniform Compliance Guidelines Manual, July 2008, Volume 363, Page 5)

SHERIFF CIVIL - RECEIPT ISSUANCE - STATE DISTRIBUTIONS

Forty-eight percent (10 of 21) of state distributions issued between, September 24, 2009 to December 31, 2009, to the Lake County Sheriff, were receipted (and deposited) between 9 and 21 days after the date on the check issued by the Auditor of the State.

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 Counties of Indiana, Chapter 1)

IC 5-13-6-1(c) states in part: "All local officers . . . who collect public funds of their respective political subdivisions shall deposit funds not later than the business day following the receipt of funds on business days of the depository in the depository or depositories selected by the . . . local boards of finance. . . ."

DRUG BUY MONEY NOT DEPOSITED TIMELY

The Lake County Multi-Agency Task Force Fund (182) disbursed \$31,000 of drug buy money to the Sheriff's Department. The \$31,000 of drug buy money was not deposited for 65 days.

IC 5-13-6-1 requires all public funds shall be deposited not later than the business day following the receipt of funds on business days of the depository. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 6)

INMATE TRUST - SUBSIDIARY LEDGER

Inmate trust accounts consist of money held for individual inmates. The trust accounts consist of money in the inmate's possession when they are booked and money the inmate receives from family and friends. Inmates may use their trust account to purchase items from the commissary, to pay for medical attention, and to order phone time.

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The Sheriff's Department implemented a new accounting system in May 2009. At December 31, 2009, the Inmate Trust bank account (control ledger) had a cash balance of \$406,156. A detailed list (subsidiary ledger) of inmate trust balances for activity on the new system totaled \$212,119. However, a detailed list (subsidiary ledger) of inmate trust balances on the old system, and still on hand at December 31, 2009, was not presented for audit. The total of the inmate trust balances on the old system was calculated to be \$194,037. Due to a lack of a detailed listing of inmates with trust balances from the old system, reconciliation of the inmate trust account and bank account could not be adequately completed.

At all times, the manual and/or 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 Counties of Indiana, Chapter 1)

INTERNAL CONTROLS - SHERIFF'S DEPARTMENT

Controls over the bank reconciliation process were insufficient at the Sheriff's Department. We were advised that bank reconciliations were prepared by an outside accounting firm for the Sheriff's inmate trust, commissary, medical, and social security funds. Documentation was not provided that indicated that Sheriff Department personnel had performed reviews of the accountant's work.

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. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

COUNTY SHERIFF  
LAKE COUNTY  
EXIT CONFERENCE

The contents of this report were discussed on October 4, 2010, with Rogelio "Roy" Dominguez, Sheriff; Marco Kuyachich, Chief; William Paterson, Commander; Lessie Smith, Commander; and John M. Kopack, Sheriff's Attorney. The official response has been made a part of this report and may be found on pages 15 through 23.

# *Kopack & Associates*

*Attorneys at Law*

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October 18, 2010

**Bruce Hartman, CPA**  
State Examiner  
State Board of Accounts  
302 West Washington Street, Room E 418  
Indianapolis, Indiana 46204-2765

*(Via: Email and Certified U.S. Mail)*

**Re: Response by Lake County Sheriff's Department to:  
Lake County Sheriff's Department Audit 2009**

Dear Mr. Hartman,

On October 4, 2010, examiners Jane Elder and Cynthia David from the State Board of Accounts ("SBA") conducted an exit interview with representatives of the Lake County Sheriff's Department ("LCSD") to review findings and comments relating to the 2009 audit. At the conclusion of said meeting, the SBA's representatives requested that any response by the LCSD to said findings be delivered on or before October 18, 2010. Accordingly, the LCSD's response is below.

The contact person at the LCSD for issues or questions related to these comments or corrective actions is: Commander William Paterson, Staff Services, TX: (219) 755-3435, Email: [wpaterson@lakecountysheriff.com](mailto:wpaterson@lakecountysheriff.com).

## **Finding #1: OVERTIME - SALARIED EMPLOYEES**

"In 2008, 2009, and 2010, the Sheriff's Department paid overtime to high ranking salaried personnel that were not permitted by local policy or agreements. Most of the Sheriff Department employee's compensation and terms of employment are governed by a "Collective Bargaining Agreement."

However, several high ranking officers are excluded from the agreement. The "Collective Bargaining Agreement" between the County of Lake, and the Fraternal Order of Police, Chris Anton Lodge #125, and the Lake County Police Association, local #72 AFL/CIO, Article I, Recognition, Section 1.1, states the following: "The Employer hereby recognizes the Indiana Fraternal Order of Police labor Council, Inc. on behalf of Fraternal Order of Police lodge #125 and the Lake County Police Association #72 as the sole and exclusive bargaining representatives with respect to wages, hours and other terms and conditions of employment for all permanent sworn employees of the Lake County Police Department excluding employees in "upper level policy making positions" as defined by Indiana State Statute."

Indiana Code (IC) 36-8-1-12 defines "Upper level policymaking position": "Upper level policymaking position" refers to the position held by the police chief or fire chief and to each position held by members of the police department or fire department in: (2) the next two (2) ranks and pay grades immediately below the

Chief, if the authorized size of the department is (A) more than fifty (50) members in the case of a police department."

At the Lake County Sheriff Department the next two ranks and pay grades are the Assistant Chief and the Commanders. Since these officers are not covered by the "Collective Bargaining Agreement", the "Lake County Employee Handbook" was consulted regarding the payment of overtime and compensatory (comp) time for upper level policymaking salaried employees.

The "Lake County Employee Handbook", Uniform Application of this Handbook, states: "It is the intent of the County Council to adopt an employee handbook that applies uniformly to all divisions of government except the Judiciary (which are employees of the Indiana 31st Judicial District), Park Department, merit correctional officers and merit police officers, each of which maintain their own handbooks or are covered by collective bargaining." A handbook for the merit police officers has not been approved by the County Council.

The "Lake County Employee Handbook", states: "Exempt - A full-time "exempt" employee is a salaried employee who is exempt from the overtime and/or compensatory time requirements of the Fair Labor Standards Act (FLSA). An exempt employee has certain decision-making responsibilities and meets other criteria of the federal act."

"We recommended that the County take appropriate action to clarify the policy for compensation of overtime and/or compensatory (comp) time for these salaried positions."

#### LCSD CORRECTIVE ACTION:

- a) IC 36-8-10 is the relevant chapter of the Indiana Code that is applicable to county police departments. IC 36-8-1-12 which defines "upper level policy making positions" for police departments in cities and towns and is not applicable to county police forces.
- b) The Lake County Employee Handbook, adopted by county ordinance 1325-B on March 13, 2007, specifically exempts merit police officers from the provisions of the employee handbook: ". . . **except** the Judiciary (which are employees of the Indiana 31st Judicial District) Park Department, merit correctional officers and **merit police officers**, each of which maintain their own handbooks or are covered by collective bargaining."
- c) The LC Employee Handbook specifically provides that ". . . parts of this book may be **superseded by union agreement or by specific department procedure.**"
- d) The LCSD Rules and Regulation, Section 5.10.01(A), provides "If an officer works a 5x2 or a 4x2 schedule, the following will apply: 1. All time worked over an eight (8) hour shift will be counted as overtime and will be figured at time and one-half payback."
- e) Pursuant to Lake Co. Ordinance 1199-B, collective bargaining agreements covering merit police officers and correctional officer are negotiated by the Lake County Council.

- f) The Lake County Council is currently engaged in negotiating a new collective bargaining agreement with the police union. The Sheriff has requested that the issues relating to police overtime and the scope of members exempted from the collective bargaining agreement be addressed and clarified in the new CBA being negotiated.

**Finding #2: OVERTIME CALCULATION**

"The Assistant Chief's overtime was incorrectly entered into the payroll system. Hours worked in excess of an eight (8) hour day were recorded as compensatory (comp) time, earned at time and a half the number of hours worked. These comp time hours were later submitted and entered as overtime hours and instead of being paid at straight time, were paid at time and a half. This caused the time worked to be multiplied by time and a half, twice. Assistant Chief Kumstar was overpaid \$1,958.92, \$3,478.42, and \$43.17, for 2008, 2009 and 2010, respectively. Total overpayment was \$5,480.51 before the employee left County employment on August 9, 2010. Assistant Chief Kumstar approved his own overtime. The overpayment of overtime has not been corrected or recovered. (This overpayment of overtime is part of, and included in the amount, of overtime paid to "Upper Level Policymaking Position" employees noted in a prior comment.) We recommended that the County pursue avenues to recapture the overpayment of overtime."

**LCSD CORRECTIVE ACTION:**

- a) After meeting and conferring with staff, it appears that comp time earned by former Asst. Chief Kumstar was correctly reported by the Asst. Chief but incorrectly calculated and entered into the payroll system by staff as overtime hours. Example: employee worked 4 hours OT, thereby earning 4 hours in comp time which was correctly listed at a total of 6 hours of OT. However, when the reported OT due was calculated by the payroll staff, it was entered as 6 hours of comp time and multiplied by correct the OT rate. This resulted in the comp time being multiplied by time and a half twice.
- b) This error has been noted and rectified and an analysis is being made of all such comp time to correct the error. The affected employee has been notified of the error and action is being taken to reimburse the county for the overpayment through regular payroll deduction.

**Finding #3: EMPLOYEE SERVICE RECORDS**

"Vacation and Sick Leave balances carried from 2009 to 2010, exceeded the allowable amount per the "Lake County Employee Handbook. Earned vacation days posted to the "Employee Service Record" exceeded the allowable amount based on years of service. Heading information on "Employee Service Record" was not complete. For example, hire date and classification, (job position) were not completed."

**LCSD CORRECTIVE ACTION:**

- a) Police Officers are not covered by the provisions of the Lake County Employee Handbook relating to vacation and sick leave.
- b) The Lake County Employee Handbook, adopted by county ordinance 1325-B on March 13, 2007, specifically exempts merit police officers from the provisions of the employee handbook: ". . .**except** the Judiciary (which are

employees of the Indiana 31st Judicial District) Park Department, merit correctional officers and **merit police officers**, each of which maintain their own handbooks or are covered by collective bargaining."

- c) The LC Employee Handbook specifically provides that ". . . parts of this book may be **superseded by union agreement or by specific department procedure.**"
- d) Section 18 of the Collective Bargaining Agreement and Sections 5.07.01 and 5.07.02 of the Rules and Regulations provide sick leave in excess of the county personnel policy. For example, a major illness not in the line of duty entitles officers up to 90 days sick leave and a major illness in the line of duty entitles officers up to 1 year of paid sick leave. Also, allotted sick days may be extended at the discretion of the Sheriff with approval of the Sheriff's Merit Board.
- e) Pursuant to LCSD Rules and Regulations 5.11.00(C), vacation days not utilized in a calendar year may be accumulated from one year to the next with approval by the chief of police. Thus, an officer may exceed his allotted vacation in any particular year when vacation days not used in the prior year were permitted to be carried over.
- f) The staff is reviewing the Employee Service Records for 2009 to ensure that all vacation and sick days were properly allotted pursuant to the Collective Bargaining Agreement and LCSD Rules and Regulations. Any errors discovered after applying these provisions and rules will be rectified.

**Finding #4: CONTRACTUAL EMPLOYEES - SHERIFF GRANTS**

"Two County employees had contractual responsibilities for grant administration, in addition to being full time County employees. These employees were issued both W-2's and 1099's for their services."

**LCSD CORRECTIVE ACTION:**

- a) LCSD staff has met with the two employees and conferred LCSD payroll staff to discuss this issue.
- b) The LCSD is providing compensation as supplemental income received for the employees. Hours worked, both regular and those for supplemental income, will be identified on weekly time sheets and reported on Form W-2 as regular wages.

**Finding #5: SHERIFF COMMISSARY EXPENDITURES**

"In 2009, the Sheriffs Commissary fund expended \$86,110 for items which did not meet statutory guidelines for Commissary disbursements. County Council approval for these disbursements was not observed in the Council minutes or presented for audit. The Council is the fiscal body under statute which has the ability to agree to certain commissary disbursements."

**LCSD CORRECTIVE ACTION:**

- a) The LCSD staff has implemented new semi-annual reporting procedures in compliance with Ind. Code § 36-8-10-21(e).

- b) These reports are software generated and will be delivered to the Lake County Council annually on or before July 1<sup>st</sup> and December 31<sup>st</sup>. The 2009 reports are being generated and will be provided to the Lake County Council by Commander Paterson.
- c) Further, additional fields are being added to the Commissary Fund software that will match each expenditure with the appropriate statutory authorization as found in Ind. Code § 36-8-10-21(d).

**Finding #6: SHERIFF'S COMMISSARY LEDGER OF RECEIPTS, DISBURSEMENTS AND BALANCES**

"The Sheriff's Department did not provide receipts, disbursements and balance reports semiannually to the County Council as required by statute. this comment has appeared in prior audit reports. The Sheriff Commissary Fund started a new accounting system in May 2009. The system was able to provide a "Bank Register Entries" report that contained a detail of deposits and disbursements (checks) for the Commissary Fund. However, this report did not include totals for receipts or disbursements and did not provide cash balances. General form No. 358, Ledger of Receipts, Disbursements, and Balances, was not in use and the current system and the related reports have not been approved. Reported financial activity for the Commissary fund was obtained by abstracting bank activity."

**LCSD CORRECTIVE ACTION:**

- a) The reports generated by the new accounting software implemented by the LCSD and submitted to the SBA for audit did contain detailed listing of all deposits and disbursements but did not provide totals and the current cash balance for said fund.
- b) The new software is capable of generating said totals and cash balances, however, LCSD staff was not aware that said totals and cash balances were required for said report. The staff has rectified this issue and all future reports will contain both the totals for each item and the corresponding cash balances.
- c) Further, staff will utilize General Form No. 358 for such reporting and/or obtain the appropriate approval of the data forms generated by the new accounting software from the SBA according to statutory requirements.
- d) The LCSD staff has implemented new semi-annual reporting procedures in compliance with Ind. Code § 36-8-10-21(e).

**Finding #7: UNCLAIMED PROPERTY - CIVIL DIVISION AND INMATE TRUST**

"The Sheriff's Department Civil Division has \$11,600.95 in stale dated checks held in trust that are distributable but remain unclaimed. The Sheriff has not remitted this amount to the Attorney General as by statute. Unclaimed funds have not been remitted to the Attorney General since 2007. At December 31,2007, the Sheriffs Inmate Trust Fund account had \$20,517.48 in unclaimed former inmates' funds."

**LCSD CORRECTIVE ACTION:**

- a) Pursuant to I.C. 32-34-1-20(c) and I.C. 32-34-1-27(a), the status of said funds were reviewed and forwarded to the office of the attorney general as

"unclaimed property." However, the attorney general's office not accept the previous reports generated therefore the sheriff has had to retain the unclaimed funds until resolution with the reporting procedures could be resolved with the attorney general's office.

- b) Staff is integrating procedures into the new computer software utilized by the Sheriff's Department to reconcile the issues relating to the reports generated for unclaimed funds and reporting to the attorney general. Upon approval of the format of the reports by the attorney general, all unclaimed funds will be forwarded and deposited with the attorney general pursuant to statute.

**Finding #8: CONDITION OF RECORDS- SHERIFF CIVIL DIVISION**

"A computerized cash book is used to record receipts and disbursement activity, and cash balances. The computerized cash book for the Sheriff Civil Division was implemented in March 2007. At that time, a beginning cash balance was not posted. In 2008, the Sheriff engaged a public accounting firm to determine the monthly balances and perform bank reconcilements for the years 2006-2007. The consultant's information and adjustments were not provided to the appropriate Sheriff's staff in order to adjust the computerized cash book's beginning balance. As a result, the cash balance in the cash book is inaccurate and has not been reconciled to the bank to verify that all activity is recorded and in the correct amounts. At December 31, 2009, the Sheriff's Civil Department cash book showed a balance of \$30,889.07. However, the bank balance was \$241,368.89, resulting in a difference of \$210,479.52 (cash long)."

**LCSD CORRECTIVE ACTION:**

- a) On August 31, 2010, the Sheriff's staff met with representatives of Schwartz-Retson, the accounting firm retained in 2008, to implement new accounting software and procedures in the Civil Division.
- b) Software interfacing issues delayed generation of reports to reconcile old ledger cash balances with the new computer software have been rectified.
- c) Amended reports for 2009, reconciling all cash balances will be provided to the SBA subject to the staff completing training and data entries therefore on the new software system.

**Finding #9: INMATE TRUST TRANSFER TO COMMISSARY**

"In 2009, the Sheriff's Department transferred \$200,000 (\$100,000 on September 15th and \$100,000 on November 9th) out of the Inmate Trust bank account into the Jail Commissary bank account. The notation on the deposit was "Commission owed by PCS". PCS (Public Communications Services, Inc) was the sole telephone company used by inmates in the jail. The Sheriff's Department earned a commission on all the telephone calls that inmates and their families purchased out of inmate trust. This commission had accumulated in the Inmate Trust bank account. The transfer was to be a correction of multiple prior years' telephone commission. However, supporting documentation for the calculation of the commission earned (transferred) was not provided for audit."

**LCSD CORRECTIVE ACTION:**

- a) The aforementioned transfers were made to correct a problem created when PCS permitted monthly commissions due to the Commissary Account to accumulate in the Inmate Trust Account.
- b) The LCSD staff has met and conferred with PCS to rectify this issue so that monthly statements are submitted to PCS prior to such transfers to enable appropriate records to be maintained on each transfer.
- c) The LCSD made the two transfers based upon commission data supplied by the PCS staff and has requested the relevant records from PCS for to support the commissions earned and transferred in 2009.
- d) Upon receipt of the records from PCS, the account records will be updated to support the transfers made on 9/15 and 11/9.

**Finding #10: 1099'S NOT ISSUED FOR SERVICES PAID OUT OF COMMISSARY**

"Two individuals were paid for services out of the Jail Commissary Fund for employee wellness training and women's work release services in the amounts of \$18,300 and \$3,425, respectively. Federal forms 1099 were not issued as required. These individuals also did not have a written contract with the County for their services."

**LCSD CORRECTIVE ACTION:**

- a) IC 36-8-10-21(d) provides the sheriff or his designee have full discretion, without appropriation by the county fiscal body, to disburse money from the commissary fund for services rendered without the requirement of a written contract.
- b) Fitness training is provided to employees of the Sheriff's Department for law enforcement purposes and the training provided at female work release is to reduce future criminal activity by female inmates per IC 36-8-10-21(d).
- c) The payroll staff has corrected the income reporting record issues and appropriate 1099 are being issued to the two part time employees providing these services who are paid out of the commissary fund.

**Finding #11: INMATE MEDICAL EXPENSES**

"Medical expenses charged to an inmate are deducted from their inmate trust account. If there is no balance in the account, the medical expense amount is accounted for in the outstanding medical debt category. No detail of accounts that composed balance of this outstanding debt was provided for audit. The balances are not written off after 30 days of discharge. If the inmate is re-incarcerated, the prior debt is sometimes reapplied to his account."

**LCSD CORRECTIVE ACTION:**

- a) The LC Jail is implementing a new electronic medical record system that is scheduled to go online in November of 2010.

- b) Staff has conferred with the medical record and commissary software vendors to implement new record procedures that will provide accurate records of and ongoing check and balances to ensure compliance with the provision of IC 11-10-3-5(c) and related statutory requirements relating to inmate medical expenses.

**Finding #12: SOCIAL SECURITY ACCOUNT**

The jail staff submits a list "of individuals in custody to the Social Security Administration. If the Social Security Administration determines that any of those individuals are currently receiving Supplemental Security Income (SSI) benefits, they will suspend these benefits and remit an incentive payment up to \$400 per individual to the Sheriff."

**LCSD CORRECTIVE ACTION:**

- a) The Sheriff's Department participates in the Social Security reimbursement program which provides payments up to \$400 per inmate identified and reported to the SSA by the jail staff.
- b) Staff has been instructed to remit all such reimbursements to the county general fund per the SBA recommendation.

**Finding #13: CIVIL - RECEIPT ISSUANCE - STATE DISTRIBUTIONS**

"Forty-eight percent (10 of 21) of state distributions issued between, September 24, 2009 to December 31, 2009, to the Lake County Sheriff, were receipted (and deposited) between 9 and 21 days after the date on the check issued by the Auditor of the State. 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 Counties in Indiana, Chapter 1)"

**LCSD CORRECTIVE ACTION:**

- a) Checks from the state auditor are often not "received" by the LCSD until several days after the date of issuance.
- b) Staff has been reminded to issue receipts and deposit checks immediately upon their being received by the department per IC 5-13-6-1.

**Finding #14: DRUG BUY MONEY NOT DEPOSITED TIMELY**

"Drug buy money for \$31,000 disbursed out of fund 182, Lake County Multi-Agency Task Force, was not deposited for 65 days."

**LCSD CORRECTIVE ACTION:**

- a) Drug buy money is often required on an emergency basis due to the exigent circumstances surround undercover buys.
- b) Staff has been reminded and protocols are in place to immediately receipt and deposit all Fund 182 buy monies per IC 5-13-6-1.

**Finding #15: INMATE TRUST SUBSIDIARY LEDGER**

"The Sheriff's Department implemented a new accounting system in May 2009. At December 31, 2009, the Inmate Trust bank account (control ledger) had a cash balance of \$406,156. A detailed list (subsidiary ledger) of inmate trust balances for activity on the new system totaled \$212,119. However, a detailed list (subsidiary ledger) of inmate trust balances on the old system, and still on hand at December 31, 2009, was not presented for audit. The total of the inmate trust balances on the old system was calculated to be \$194,037. Due to a lack of a detailed listing of inmates with trust balances from the old system, reconciliation of the inmate trust account and bank account could not be adequately completed."

**LCSD CORRECTIVE ACTION:**

- a) The new software implemented in May of 2009 for Inmate Trust Accounts contains sub-account reports for each individual inmate in the LC Jail. However, with approximately 17,000 inmates per year entering and leaving the LC Jail, the sub-accounts were not presented for audit as the SBA's request for records on these accounts was understood by the LCSD staff not to require production of individual records for each sub-account.
- b) The LCSD staff has conferred with the commissary vendor and appropriate software changes are being made so that all sub-accounts will be listed on one report reflecting inmate balances for each individual inmate.
- c) Detailed listings will be generated of inmates with trust balances from the old system to enable reconciliation of the inmate trust account and bank account to address and rectify this issue.

On behalf of the Lake County Sheriff, I would like to thank you for the opportunity to respond to each of the above findings contained in the 2009 audit of the Lake County Sheriff's Department. Please feel free to contact me at your convenience if you have any questions referencing this matter.

Sincerely,



John M. Kopack  
Lake County Sheriff's Attorney

cc: Sheriff Roy Dominguez  
Chief Marco Kuyachich  
Cmdr. William Paterson, Staff Services  
Jane Elder, SBA  
Cynthia David, SBA  
Lori Adney, SBA