

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

SUPPLEMENTAL EXAMINATION REPORT

OF

CENTER TOWNSHIP TRUSTEE

MARION COUNTY, INDIANA

January 1, 2005 to December 31, 2010



FILED

07/13/2012

*This report was reissued on
7-20-12 to include an additional
Official's Response found on
pages 16 to 37.*

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TOWNSHIP OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Trustee	Carl L. Drummer William E. Douglas Eugene Akers	01-01-03 to 02-13-09 02-14-09 to 12-31-10 01-01-11 to 12-31-14
Chairman of the Township Board	Linda Journey Phyllis Carr Howard Smith Linda Journey Phyllis Carr Linda Journey	01-01-05 to 12-31-05 01-01-06 to 12-31-07 01-01-08 to 12-31-08 01-01-09 to 12-31-09 01-01-10 to 12-31-10 01-01-11 to 12-31-12



STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

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TO: THE OFFICIALS OF CENTER TOWNSHIP, MARION COUNTY

We have examined the records of the Trustee for the period from January 1, 2005 to December 31, 2010, 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 Examination Results and Comments. The financial transactions of this office are reflected in the Annual Reports of Center Township, Marion County for the years 2005 through 2010.

STATE BOARD OF ACCOUNTS

June 5, 2012

**CENTER TOWNSHIP TRUSTEE
MARION COUNTY
EXAMINATION RESULTS AND COMMENTS**

QUESTIONED COST - SALARY OF TOWNSHIP CHIEF FINANCIAL OFFICER

Alan S. Mizen, former Township Chief Financial Officer (CFO), was hired in November of 2001 as a contracted employee with a compensation of \$72,000 per calendar year. The employment agreement allowed him to receive annual salary raises, to earn paid time off (PTO), and to participate in the Township's Compensatory (Comp) Time Program. A review of former Township CFO Alan S. Mizen's compensation for the period January 1, 2005 to December 31, 2010, disclosed questionable items.

In 2005, Alan S. Mizen, former Township CFO, began receiving compensation for overtime hours worked in addition to his regularly scheduled work hours. The employment agreement the Township entered into with former Township CFO Alan S. Mizen indicated that the CFO was a salaried position and did not state that he would be paid for overtime hours worked. In addition to the overtime compensation received, he was compensated for comp time earned in previous years. He received payments for comp time earned in 2007, 2009, and 2010. The Township's personnel policy presented for examination did not indicate "cashing out" of comp hours was allowable. Finally, it was noted that former Township CFO Alan S. Mizen was compensated for PTO hours in 2010 that exceeded the 150 hour limit of PTO hours that could be paid out to any individual as stated in the Township's personnel policy presented for examination.

A schedule of the payments, including a breakdown by year and type is listed below:

Calendar Year	Salary	Year End Earnings			Type of Payment				Totals
		Record Wages	Variance	Compensable Time	Overtime	Paid Time Off (PTO)			
2005	\$ 79,402.66	\$ 83,679.80	\$ 4,277.14	\$ -	\$ 4,277.14	\$ -	\$ 4,277.14	\$ -	\$ 4,277.14
2006	81,380.32	93,828.59	12,448.27	-	12,448.27	-	-	-	12,448.27
2007	89,868.04	114,165.92	24,297.88	8,079	16,218.55	-	-	-	24,297.88
2008	88,421.66	107,293.14	18,871.48	-	18,871.48	-	-	-	18,871.48
2009	88,461.18	118,534.59	30,073.41	8,281.33	21,792.08	-	-	-	30,073.41
2010	92,295.31	173,236.29	80,940.98	52,038.76	22,268.32	6,633.90	6,633.90	80,940.98	
Totals				\$ 68,399.42	\$ 95,875.84	\$ 6,633.90	\$ 6,633.90	\$ 170,909.16	

Compensable Time

The Compensatory (Comp) Time Program is an employee fringe benefit. The program's policy allows for employees to earn "comp" time for hours worked in addition to their regular scheduled work week. Comp hours would be earned at time and a half per additional hour worked. The comp hours earned would be in lieu of the employee being paid cash for the additional hours worked. Comp hours were to be used by the employee at a later time to take time off, equivalent to paid time off (PTO). A revision to this policy, made in 2004, required employees to use the comp time in the year it was earned. It did not allow the employee to carry forward a balance from one calendar year to the next. The Township's Employee Handbook that was presented for examination stated in part: "Employee may not carry-over comp time into the next calendar year effective January 2004. Employees are encouraged to use all comp time previously earned during the period in which it was earned."

Alan S. Mizen, former Township CFO, began accruing comp time in 2002, in some cases accruing up to 12 comp hours a day and up to a total of 36.50 comp hours in a two-week pay period. A large number of hours continued to accrue from 2004 to 2007, which conflicted with the revised Comp Time Program policy.

**CENTER TOWNSHIP TRUSTEE
MARION COUNTY
EXAMINATION RESULTS AND COMMENTS
(Continued)**

He had accrued a balance of 900 comp hours by the end of 2007. In 2007, Alan S. Mizen, former Township CFO, started cashing out his comp time hours, receiving compensation for these hours at his current hourly rate. The personnel policy presented for examination did not state that cashing out comp time was an allowable procedure. Additionally, no evidence was presented for examination that the Trustees in office during these periods approved cashing out these comp time hours. In total, from 2007 through 2010, Alan S. Mizen, former Township CFO, cashed out 1,623.72 hours of comp time for a total questioned amount of \$68,399.42.

(See Summary of Questioned Costs, page 38)

Overtime

Overtime can be earned by hourly employees of the Township. The Township's personnel policy that was presented for examination stated, "overtime hours are any hours worked over eight in a day or over forty in a week." The policy also stated, "hours worked over the regularly scheduled hours are to be approved by management prior to incurring the hours in order to qualify as overtime." The policy also required employees to complete a separate form for reporting overtime hours worked.

Alan S. Mizen, former Township CFO, began reporting and receiving compensation for overtime hours in 2005. A very large number of overtime hours were reported on his timesheets from 2005 to 2010, for which he received compensation. In some cases, he reported working up to 76 overtime hours in a two-week pay period. The employment agreement the Township entered into with former Township CFO Alan S. Mizen does not indicate that he would be eligible for overtime hours. Furthermore, no evidence was presented for examination to document the Trustee's review and/or approval of these overtime hours, nor was the proper form detailing the overtime hours worked attached to his timesheets as required by the Township's employee handbook. In total, from 2005 through 2010, Alan S. Mizen, former Township CFO, reported working 1,438.09 hours of overtime for a total questioned amount of \$95,875.84.

(See Summary of Questioned Costs, page 38)

Paid Time Off (PTO)

Paid Time Off (PTO) is an employee fringe benefit. PTO benefits are earned based upon the length of service, which is computed according to an employee's anniversary date. The Township's PTO policy that was presented for examination stated: "Full time employees may accumulate a maximum of 225 hours of PTO leave time. Any accumulations in excess of 225 hours will be lost at the time the accumulation exceeds 225 hours." In addition, the policy allowed employees to "sell back" PTO hours to the Township. The policy stated: "Hours accumulated that are greater than 75 hours of PTO, may be sold to the Township at the employee's then current pay rate, at the conversion rate of one hour of PTO pay for every two hours of PTO sold back to the Township, or 50%." This policy provided the opportunity for any employee to sell back a maximum of 150 hours for 75 hours of pay at their current rate.

Alan S. Mizen, former Township CFO, earned PTO throughout his employment with the Township. However, the PTO policy was not followed in regards to the maximum amount of PTO hours each employee is allowed to accumulate. At the beginning of 2005, Al Mizen had a PTO balance of 255.25 hours. His PTO balance was never less than the 225 maximum hours allowed during the period reviewed; however, he continued to accumulate PTO hours during this time period.

**CENTER TOWNSHIP TRUSTEE
MARION COUNTY
EXAMINATION RESULTS AND COMMENTS
(Continued)**

Alan S. Mizen, former Township CFO, had a PTO balance on December 17, 2010, of 618 hours. At that time, he elected to "sell back" 442.50 PTO hours to the Township. He was compensated for 221.25 hours which calculated to \$10,035.90. However, based on the policy presented for examination he was not entitled to this amount. The maximum amount of hours allowed to be sold back, per the policy was 150 hours, for 75 hours of compensation. Alan S. Mizen, former Township CFO, was paid for 146.25 PTO hours over the maximum amount allowed based on the policy presented for examination, for a total questioned amount of \$6,633.90.

(See Summary of Questioned Costs, page 38)

Additional Information

Throughout the time we were performing our examination fieldwork, we requested of the current Township officials all current personnel policies and other related payroll documentation. We were provided with what was represented as the current Township Employee Handbook & Personnel Policy Manual, and contained the policies for compensatory time, overtime, and paid time off as described above. We also inquired to former trustees William E. Douglas and Carl L. Drummer as well as former CFO, Alan S. Mizen for any further documentation we could use to formulate our audit conclusions.

Four months after the completion of our examination fieldwork former Trustee William E. Douglas, through his attorney, provided an inter-office communication that was in addition to the original personnel policies provided during the examination. The Inter-Office Communication, dated December 30, 1997, indicated that the prior Trustees had the authority to verbally make changes, on a case by case basis, to the Comp Time Policy. The Township's Inter-Office Communication states in part: "... Comp time may not be carried over from one calendar year to another unless it is approved by the Trustee or his designee." Former Trustee William E. Douglas, through his attorney, also provided an additional section of the original Township Personnel Policy not previously presented for examination. This section, labeled Attendance Policy Exceptions, states in part: "Exceptions to Attendance Policies will be determined on a case-by-case basis by the Trustee, CEO, or Administrative designee."

Although the additional information presented by the former Trustee gave the Trustees authority to verbally change the Township's Attendance and Personnel policies, verbal changes and modifications to written and approved policies are not allowable, based on State Board of Accounts Accounting and Uniform Compliance Guidelines. Written documentation could not be provided which indicated that these deviations from the Township's policies were approved by the respective trustees. Therefore, the compensation paid to Alan S. Mizen, former Township CFO, for the "cash out" of compensatory time, overtime hours he reported working, and the "sell back" of PTO hours over the allowable amount were considered questionable items.

All types of employee benefits should be detailed in a written policy. Payments for expenses not authorized in a written policy cannot be allowed.

The board should adopt policies governing sick leave, vacation leave, and any other types of special leave. (Accounting and Uniform Compliance Guidelines Manual for Townships, Chapter 17)

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 Townships, Chapter 17)

**CENTER TOWNSHIP TRUSTEE
MARION COUNTY
EXAMINATION RESULTS AND COMMENTS
(Continued)**

Each governmental unit is responsible for complying with the ordinances, resolutions, and policies it adopts. (Accounting and Uniform Compliance Guidelines Manual for Townships, Chapter 13)

EXCESSIVE HOURS WORKED

Our review of former Township CFO Alan S. Mizen's employee timesheets and attendance records for the period January 1, 2005 to December 31, 2010, disclosed some questionable activity. During this time period, there were numerous instances where Alan S. Mizen, former Township CFO, reported on his timesheet that he worked over 12 hours in one given day. In some cases, he reported working 12 hours in addition to his regularly scheduled 10 hour work day. For audit purposes, we considered the hours to be excessive for any work performed on a Saturday, Sunday, Holidays, or any other days in which the time reported was 12 hours or more.

The total numbers of days, where excessive hours were claimed, by calendar year are scheduled below:

<u>Calendar Year</u>	<u>Number of Days</u>
2005	44
2006	86
2007	79
2008	90
2009	112
2010	107

With the excessive number of days in which time was reported as either being worked in excess of 12 hours, on a weekend and/or a holiday, we would have expected to see a corresponding amount of output/work generated from the hours being charged. However, as discussed in the Center Township Examination Report for the period January 1, 2009 to December 31, 2010, and the Examination Report of the Marion County Small Claims Court, Center Township Division (Report B40189), several items that were the responsibility of the CFO were either not performed or were incomplete. For example, accurate bank reconciliations were not completed during the two years of the examination; a Court Cash Book of Receipts and Disbursements was not maintained; and fees totaling \$1,931,438 collected by the court and to be remitted to the State, Marion County, and the Township had not been disbursed. From our review of Alan S. Mizen, former Township CFO's, timesheets and other related payroll records, we could not determine what duties or projects were performed during the times we noted above as being excessive. These excessive hours reported as being worked caused the Township additional costs in compensation and benefits.

CENTER TOWNSHIP TRUSTEE
 MARION COUNTY
 EXAMINATION RESULTS AND COMMENTS
 (Continued)

Specific examples of dates, with the largest hours reported, on former Township CFO Alan S. Mizen's employee timesheets and attendance records are illustrated below:

Date	Hours Reported
Sunday, January 15, 2006	18.50
Tuesday, December 12, 2006	18.00
Thursday, December 14, 2006	18.75
Monday, December 18, 2006	19.25
Tuesday, June 12, 2007	19.50
Saturday, January 19, 2008	18.00
Monday, January 21, 2008	18.00
Tuesday, January 22, 2008	17.00
Monday, July 21, 2008	17.00
Thursday, July 24, 2008	19.00
Wednesday, August 13, 2008	18.33
Saturday, August 16, 2008	22.00
Sunday, August 17, 2008	22.00
Thursday, January 08, 2009	18.75
Monday, January 12, 2009	20.00
Tuesday, January 13, 2009	18.00
Wednesday, January 14, 2009	21.00
Thursday, August 20, 2009	17.00
Friday, August 21, 2009	17.00
Wednesday, October 28, 2009	18.75
Thursday, January 14, 2010	17.00
Monday, January 18, 2010	18.00
Tuesday, January 26, 2010	19.00
Thursday, January 28, 2010	17.00
Wednesday, February 03, 2010	17.25
Wednesday, September 08, 2010	17.00
Thursday, December 09, 2010	17.00
Monday, December 20, 2010	17.00

Every effort should be made by the governmental unit to avoid unreasonable or excessive costs.
 (Accounting and Uniform Compliance Guidelines Manual for Townships, Chapter 13)

INTERNAL CONTROL WEAKNESSES – PAYROLL PROCESS

Major weaknesses in internal controls over the payroll process were identified during the examination period reviewed. First, Alan S. Mizen, former Township CFO, did not sign his timesheets nor were they reviewed, signed, or approved by the Trustees throughout his entire employment with the Township. The Township's Employee Handbook stated in part: "Management will provide an attendance report form that employees will complete and sign representing each week of the pay period. Supervisors are required to sign approval of reported time and submit to payroll on designated dates and schedules." This lack of oversight may have allowed for incorrect time worked to be submitted and paid without being detected.

**CENTER TOWNSHIP TRUSTEE
MARION COUNTY
EXAMINATION RESULTS AND COMMENTS
(Continued)**

Secondly, the proper procedures were not in place for documenting and approving overtime hours for which Alan S. Mizen, former Township CFO was compensated. The Township's Employee Handbook stated in part: "Hours worked over the regularly scheduled hours must be approved by management prior to incurring the hours in order to qualify as overtime. Supervisors will provide forms for reporting overtime worked." Documentation was not provided for examination that indicated management approval of the overtime hours Alan S. Mizen, former Township CFO, reported working, prior to working those hours. Also, the proper forms were not used to document the overtime hours worked. This lack of management approval may have allowed for incorrect overtime hours to be submitted and paid without being detected.

Lastly, the proper documentation could not be provided to ensure that Alan S. Mizen, former Township CFO, was compensated in accordance with the management approval. He was compensated for items that were not detailed out in his contract and were not in compliance with the policies of the Township. Written approvals by the Trustees in office at the time were not provided which documented the approval that Alan S. Mizen, former Township CFO was allowed to earn overtime compensation, to "cash out" his compensatory time balances, to exceed the maximum allowable paid time off (PTO) balance of 225 hours, or to be paid for PTO balances in excess of the 150 hour limit. Discussion with former officials revealed that the Trustees' approval for some of the deviations from the original employment agreement and Township Employee Handbook mentioned above were made verbally. However, no correspondence or other documentation was presented to support any approvals of the deviations noted above. Verbal changes to written policies and procedures cannot be substantiated and are not considered sufficient audit evidence. The lack of controls over documentation for changes and approvals in written policies and procedures may have allowed for incorrect amounts, including overpayments, to be made and not be detected.

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 Townships, Chapter 13)

Controls over the receiving, 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 Townships, Chapter 13)

CENTER TOWNSHIP TRUSTEE
MARION COUNTY
EXIT CONFERENCE

The contents of this report were emailed to Alan S. Mizen, former Chief Financial Officer; Carl L. Drummer, former Trustee; William E. Douglas, former Trustee; and Eugene W. Akers, Trustee, on June 5, 2012.

The Official Response of Carl L. Drummer, former Trustee, has been made a part of this report and may be found on pages 11 and 12.

The Official Response of Alan S. Mizen, former Chief Financial Officer, has been made a part of this report and may be found on pages 13 through 15.

The Official Response of William E. Douglas, former Trustee, was received on July 18, 2012, and has been made a part of this report. It may be found on pages 16 through 37.

We did not receive an Official Response from Eugene W. Akers, Trustee.

Carl L. Drummer
One American Square
Suite 2900
Indianapolis, Indiana 46282

Sommer Cannon, SBOA

This letter will serve as a preliminary response to the State Board of Accounts ("SBOA") recent report regarding "questioned costs" in the Center Township Trustee's Office ("Office"). My tenure as Center Township Trustee began in 1996 and ended in early 2009. The SBOA's report covers a period that extends in part beyond my tenure.

Generally, I applaud the SBOA for working around the state to reduce the rampant nepotism and self-dealing that occurs in some local governments. The tools available to the SBOA to pursue such matters are powerful and helpful in those circumstances. However, those tools can easily be abused by overzealous prosecution of matters that these tools were not intended to address. In the case of this SBOA report, I submit to you that the allegations contained in this report involving me are misguided.

In particular, the SBOA's "questioned cost" report suggests that Township Chief Financial Officer Alan S. Mizen received payment for compensatory time to which he was not entitled. I am at a distinct disadvantage in responding to the particulars of the report at this time as the timesheets questioned by the SBOA have not been provided to me for examination. I have received no other documentation to assist me in evaluating the SBOA's other claims. Further, I am not in possession of any of the Office's official records as I left office in early 2009.

As Center Township Trustee, I faithfully and diligently discharged my duties. To that end, I hired Alan S. Mizen as Center Township's Chief Financial Officer. I did so due to the complexity and breadth of the Office's duties and in a sincere attempt to improve every aspect of the Office's financial operations. In fact, I hired Mr. Mizen directly from the SBOA staff so that the Office's finances were handled by someone expert in SBOA rules and processes. I relied extensively on Mr. Mizen in that role.

The SBOA audited the Office's books for the period covering January 1, 2005 to December 31, 2006 and submitted a report as of October 26, 2007. The principal issues raised in that report involved the condition of records and the timeframes and methodology for bank reconciliations. Those issues, which I understand are common SBOA findings, were addressed. No mention of payroll irregularities were raised during this audit. I relied on the SBOA audits to assist me in continuing to improve the Office's financial operations.

A SBOA audit produced subsequent to my departure from office also contained no mention of the payroll irregularities the SBOA now raises.

My concern with the SBOA report is that it appears that the SBOA takes the position that an elected officeholder can be held strictly liable for potential errors that he or she could not reasonably detect. That position should be a warning to anyone in government that has any fiscal responsibility whatsoever.

Finally, reports of this nature ignore the value of a person's reputation. In the public's view, my reputation will be tarnished by the mere publication of this report. I cannot emphasize enough that I

made every effort personally to improve the Office and hired the staff necessary to improve the office, as well. The SBOA's report belies these efforts and does a disservice to both myself and many others who worked tirelessly to provide a valuable service to the public.

I respectfully request you reconsider the publication of this report.

Sincerely,

Carl L. Drummer

June 14, 2012

Mr. Bruce Hartman,
State Examiner
State Board of Accounts
302 West Washington Street, Room E418
Indianapolis, IN 46204

RE: Center Township, Marion County Audit Results and Comments and Questioned Costs

Mr. Hartman,

I strongly disagree with the opinions that the State Board of Accounts has expressed in the Audit Results and Comments as a result of its examination of the records of Center Township of Marion County. In response to your opinions I have provided information that supports that I have acted as required by applicable employment agreements, policies, guidelines, and state and federal regulations. My response includes information documenting that some of the opinions included in this report are not supported by specific authoritative materials, universally applied, and therefore should not be included in this report.

I have previously provided the Township and State Board of Accounts with authoritative materials and documentation to support the validity of the transactions summarized in the opinions and questioned costs were valid transactions and are authorized by contracts, policies, state and federal regulations. The hours reported on my timesheets were authorized, worked on Township matters, and based upon my employment agreement, policies, state and federal regulations and support the position that the compensation received was valid and paid in accordance with authoritative materials.

Below you will find my responds to specific items contained in the report.

Questioned Costs

My employment agreement indicated my position was "salaried position and did not state that he would be paid for overtime hours worked". As included in this comment my employment agreement did state that I was "eligible to participate in the Township's Compensatory (Comp) Time Program".

In relation to my employment agreement "salary" represents the cumulative cash payments for regularly scheduled hours. I was not eligible to earn "Comp" time without working more hours than my regularly scheduled number of hours. Additionally, the Federal Labor Standards Act (FLSA) regulations (FLSA 29 CFR 541.602) state "an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours work". State regulations specifically prohibit payment of compensation to government employees when hours are not worked. My compensation and comp balances were determined on an hourly basis according to my employment agreement, and policy, state and federal regulations.

As cited in this report "The program's policy allows for employees to earn "comp" time for hours worked in addition to their regular scheduled work week. Comp hours would be earned at time and a half per additional hour worked. The comp hours earned would be in lieu of the employee being paid cash for the additional hours worked." This indicates that cash payment for additional hours worked (comp hours) was an option. Additionally, FLSA 29 CFR 553.27 states: (a) Payments for accrued compensatory time earned after April 14, 1986, may be made at any time and shall be paid at the regular rate earned by the employee at the time the employee receives such payment. The payments for the additional hours worked that I received termed as "overtime" in this report, were the immediate payment of comp time earned. The time sheets did not contain a row to record Comp Time Paid therefore they were recorded on the comparable row labeled "Overtime Payable". My compensation for comp time worked and paid in the pay period earned were valid and paid consistent with my employment agreement, policy, state and federal regulations.

The opinion stated that I received payments for paid time off (PTO) that exceeded the policy allowed number of hours. The policy also established that allowed PTO hours to be carried over from year to year to be modified on a case by case basis. I did have approval to carry over hours in excess of policy and when asked to reduce the number of hours to below maximum contained in the policy in 2010 I “sold” a portion of my PTO hours to cash at the policy formula rate. To the best of my knowledge a copy of approval was contained in my personnel file. My compensation for converted PTO balances was valid and paid consistent with my employment agreement, policy, state and federal regulations.

Compensable Time

This opinion incorrectly addresses Comp time as a “fringe benefit”. Compensatory time is not included in the Township Handbook “fringe benefits” and is required by Federal regulation. Employers are subject to the regulations established by those Federal agencies. As affirmed in the Audit Results and Comments my employment agreement states that I was eligible to participate in the comp time program. The Accounting and Uniform Compliance Guidelines Manual for Townships Page 17-1 states in part: “Each governmental unit should adopt a written policy regarding the accrual and use of leave time and compensatory time and the payment of overtime. Negotiated labor contracts approved by the governing board would be considered as written policy. The policy should conform to the requirements of all state and federal regulatory agencies”. Alfred B. Robinson, Jr. Acting Administrator Wage and Hour Division states in FLSA 2004-14: “an employer may *not* remove FLSA compensatory time from an employee’s service record if the time represents hours worked in excess of 40 per week. FLSA 29 CFR 553.27 states: (a) Payments for accrued compensatory time earned after April 14, 1986, may be made at any time and shall be paid at the regular rate earned by the employee at the time the employee receives such payment. My employment agreement, the policy handbook, the accounting manual and federal regulations all indicated that the “cashing out” of comp time is valid in lieu of being paid for scheduled hours not worked. Payment for comp time should not be included as a question cost.

Overtime

As stated above under Questioned Costs, the payments termed “overtime” are the results of the immediate payout of comp time and time sheet reporting convention. The hours worked were approved and worked on Township related matters. The validity of the payments termed “overtime” is supported by my employment agreement, the policy handbook, the accounting manual, and state and federal regulations. These transactions should not be included as questioned costs.

Paid Time Off (PTO)

As indicated in the comment, the policy established a maximum accrual amount of PTO hours as well as a sell back option. The policy handbook also authorized the Trustee to make exceptions to the policies on a case by case basis. During periods indicated in the opinion I was one of the employees granted an exception to the maximum number of PTO hours allowed to be accumulated and carried over. In December 2010 employees were asked to reduce PTO hours to levels below the policy maximum. Pay out of excess PTO hours subsequently occurred in accordance with the sell back provisions of the PTO policy. My compensation for PTO balances “sold back” to the Township was valid and paid consistent with my employment agreement, policy, state and federal regulations. Payment for the sale of excess PTO hours at the policy rate should not be included as questioned costs.

Additional Information

The opinion states that the policies over compensation and leave time are required to be approved by the board, the policies are required to comply with state and federal requirements, and the entity has an obligation to comply with the policies. The Township policy as referred to in the comment Attendance Policy Exceptions, states in part: Exceptions to Attendance Policies will be determined on a case-by-case basis by the Trustee, CEO, or Administrative designee.” The Township did implement policies as required by the specific citations included, and granted exceptions in accordance with the authority established in the policy, therefore the opinion

that policies were not implemented and that the Township did not comply with the citations should not be included in this report.

Excessive Hours Worked

I did perform services directly for Center Township during the hours reported on my time sheets. Examination of my employment agreement, the policy handbook, the accounting manual, state statutes and federal regulations did not identify any authoritative material that established "excessive hours worked" for which employees are not entitled to compensation. Under FLSA regulations employees are entitled to be compensated for all of the hours that they work. The Township was not informed of the existence of this standard during prior audits and given the opportunity to modify the staffing and actions in order to comply with this requirement. This issue appears arbitrary and in conflict with FLSA regulations. Retroactive application of this undocumented criterion would be punitive and would establish a negative precedent for all employees who commit to performing services beyond normally scheduled time and should not be included in this report.

Examination of my employment agreement, the policy handbook, the accounting manual, state statutes, federal regulations or any other authoritative materials did not reveal any requirement that compels any employee to document the specific activities are being performed on "time sheets and other related payroll records" as indicated in the comment. I was not asked to provide the documentation sited to my supervisors or any other individuals. I know of no governmental entity that requires or maintains this level of work activity documentation. The Township was not informed of the existence of this standard during prior audits and given an opportunity to modify the recordkeeping to comply with this requirement. There appears to be no authoritative basis that establishes this criterion as a requirement to determine the validity of any hours worked by any employee. This issue appears arbitrary, in conflict with FLSA regulations, and the retroactive application of this undocumented criterion would be punitive and would establish an operational requirement that would adversely impact the effectiveness of all government employees, the services they provide, and the cost of delivery of services. This opinion should not be included in this report.

Internal Control Weaknesses – Payroll Process

The opinion states that I did not sign his time sheets I electronically provided my time sheets to payroll. My time sheets included my typed name and the date that I made them available to payroll personnel for review and processing. The typed name was my electronic signature.

The statement "Alan S. Mizen was compensated for items that were not detailed out in his contract and were not in compliance with the policies of the township." is incorrect. My employment agreement, the policy handbook, the accounting manual, and federal regulations all support the validity of the compensation that I received. To the best of my knowledge copies of documentation supporting some of the exception actions were placed in my personnel files. As indicated in the comments some approvals were made verbally, which would have provided documentation of the implementation of controls had they been memorialized in written form and filed for review.

I will vigorously defend the positions that: all compensation received was valid and earned in service to Center Township and that compensation was in compliance with my employment agreement, the policy handbook, the accounting manual, state and federal regulations.

Sincerely

Alan S. Mizen

Via: First Class Mail

July 18, 2012

State Board of Accounts
Attention: Paul D. Joyce, CPA – Deputy State Examiner
302 West Washington Street, Room E418
Indianapolis, Indiana 46204-2765

**RE: Supplemental Response to Notice of Result of Examination
Pertaining to William E. Douglas**

Dear Mr. Joyce:

I have been retained by William E. Douglas to represent him in the above-referenced matter. I am receipt of your Supplemental Report of June 5, 2012. This letter is our response to the Notice of Result of Examination and Supplemental Report (“Report”). This response does not address the Report in its entirety, but only the three (3) primary areas of concern noted in the Report pertaining to the compensation of Al Mizen (“Mizen”): Compensable time (“Comp Time”), Overtime and Paid Time Off (“PTO”). In addition, this response does not address the accuracy of the specific amounts declared as overpayments. More data is needed to verify these numbers.

Trustee William E. Douglas (“Trustee Douglas”) served from February 14, 2009 until December 31, 2010. At all times, Trustee Douglas performed his office with due diligence and acted in good faith. The Trustee is granted wide discretion under the Employee Handbook and Personnel Policy Manual (“Policy Manual”). As outlined below, this discretion includes the authority to make exceptions to stated policies.

COMPENSABLE TIME

The Report notes that the Policy Manual on compensable time requires employees to use compensable time in the year that it was earned. The Report further states that Policy Manual does not allow an employee to carry forward a balance from one (1) calendar year to the next. However, the Report neglects to state the Policy in its entirety. The Policy states that “comp time may not be carried over from one (1) calendar year to another year *unless it is approved by the Trustee or his designee.*” (Emphasis supplied) (Attached hereto as “Exhibit A”). The Policy undoubtedly gives the Trustee the discretion to allow an employee to carry over Comp Time from one year to the next. Moreover, this approval is not required to be in writing. In the present case, Trustee Douglas was aware that Mizen had accumulated Comp Time and in order to ensure that Mizen was properly compensated for his work, Trustee Douglas approved the carryover of the Comp Time. This was within Trustee Douglas’ discretion and was in compliance with Policy.

The Report also states that the Policy Manual does not allow the cashing out of Comp Time hours. It is true that there is no specific policy allowing the cashing out of Comp Time. However, Trustee Douglas had the authority to approve a cash out under the Policy Manual. Both Comp Time and PTO policies are considered attendance policies by the Township. This is made clear by an Interoffice Communication dated July 21, 2003 which specifically calls PTO an “attendance policy” (Attached hereto as “Exhibit B”). In addition, page six (6) of the PTO Policy states that “exceptions to attendance policies will be determined on a *case by case basis by the Trustee, CEO or administrative designee*” (Attached hereto as “Exhibit C”). That the Trustee has broad discretion is further made clear under page seven (7), paragraph B of the Personnel Policy Manual, which states that the Manual “may be changed or amended *at any time*

at the discretion of the Trustee or Trustee's designee" (Attached hereto as "Exhibit D"). Accordingly, Trustee Douglas was within his discretion when he approved the Comp Time cash outs. It came to Trustee Douglas' attention that the successor Trustee was going to eliminate all accrued Comp Time on the books. Trustee Douglas did not believe it fair or proper for Mizen to lose the benefit of time that he had worked without any compensation and in his discretion deemed it appropriate to allow Mizen to cash out the hours. Finally, although Mizen's responsibilities were consistent with those of an exempt employee, Mizen's contract was clearly intended to give him the rights and privileges of a non-exempt, hourly employee under the Fair Labor Standards Act (Attached hereto as "Exhibit E" – *see* paragraphs eight (8) and eleven (11)). Under 29 C.F.R. Part 533 of the Fair Labor Standards Act, employers are not allowed to remove Comp Time hours from an employee's record without compensating an employee.

OVERTIME

The Report notes that Mizen received compensation for Overtime but that Mizen's Employment Agreement did not allow him to be compensated for Overtime; that there is no evidence that the Trustee preapproved Overtime hours; and that the appropriate forms were not filled out for Overtime.

Trustee Douglas did verbally pre-approve Overtime by Mizen. Although it certainly would have been ideal to have such preapproval in writing, the Policy Manual does not require it. Secondly, Mizen's Employment Agreement, paragraph four (4) states that "employee will comply with all applicable requirements and guidelines as contained in Township's Employee Handbook and Personal Policy Manual, and subsequent revisions approved by Township if not covered elsewhere in this agreement, *or as directed by Trustee or his designee.*" (emphasis supplied) (*See "Exhibit E"*). This paragraph, coupled with paragraphs eight (8) and eleven (11) of Mizen's Employment Agreement allowed the Trustee to apply overtime provisions to Mizen. As noted previously, Mizen's Agreement was intended to give him the rights and privileges of a non-exempt, hourly employee.

The failure to use the designated forms is not a substantive violation. Mizen's attendance records clearly document the Overtime that he earned.

PAID TIME OFF

The Report states that Mizen was allowed to accumulate six hundred eighteen (618) hours of PTO, contrary to the PTO Policy, which only allows an accumulation of a maximum amount of two hundred twenty-five (225) hours. The Report also states that an employee is only able to sell back a maximum of one hundred fifty (150) hours for seventy-five (75) hours of pay at the current rate.

As previously noted, on page six (6) of the PTO Policy it states that "exceptions to attendance policies will be determined on a case by case basis by the Trustee, CEO or administrative designee" (*See "Exhibit C"*). Accordingly, Trustee Douglas made an "exception" to this Policy because he determined that allowing Mizen to cash out more than the one hundred fifty (150) hours was appropriate. This was within his discretion under the Policy.

It must be noted that Mizen was an excellent employee. Mizen worked long and extended hours, frequently going beyond the call of duty to address Township issues. Trustee Douglas had the discretion to compensate Mizen for his exemplary work and he exercised that discretion to do so.

ADDITIONAL NOTES

The Report states "although the additional information presented by the former Trustee gave the Trustees authority to verbally change the Township Attendance and Personnel policies, verbal changes and modification to written and approved policies are not allowable, based on the State Board of Accounts Accounting and Uniform Compliance Guidelines." Hence, the Report acknowledges that the Township Policy does allow the Trustees to make verbal changes and modifications to Township policy but states that the Trustee is unable to exercise that power because the State Board of Accounts Accounting and Uniform Compliance Guidelines ("Guidelines") prohibits this. However, if the Township Policy Manual

is in conflict with the Uniform Guidelines, this is no fault of the Trustee Douglas. Trustee Douglas had a right and responsibility to rely on the authority conveyed to him through the Policy Manual that was in effect at the time that he took office. Indeed the Report cites the Guidelines which state "each governmental unit is responsible for complying with the ordinances, resolutions, and policies it adopts," but then in the same view the Report states that Trustee Douglas should not have exercised the authority given to him under Township policies. Trustee Douglas cannot be held responsible if the Township Policy Manual is in conflict with the Uniform Guidelines. That is an issue that must be directed to the Board of Trustees, not Trustee Douglas.

The fact is the Policy Manual gives the Trustee broad powers including the granting of other privileges or rights not specifically stated in the Policy. For example, the Attendance Policy allows the Trustee to make exceptions to the Policy on a "case by case" basis. This clearly grants the Trustee discretion to confer a privilege to an employee that may not be specifically stated in the Policy Manual. Accordingly, this provision contemplates that not every benefit or privilege that an employee may receive will be written in the Policy. The Report also suggests that the Guidelines supersede Township policy. However, the Guidelines do not support that suggestion. The Guidelines state the following in its introduction page:

The Accounting and Uniform Compliance Guidelines Manual for Townships is designed to provide townships with *some* of the information needed to fulfill duties. The information contained herein is intended *to assist you and does not represent legal advice, or a legal opinion*, references to statutes or other authoritative materials may not be all inclusive.

This makes clear that the Guidelines are intended to "assist" townships in their activities, not legally mandate. Trustee Douglas relied in good faith on the Township policies in effect and he complied with the policies. Accordingly, there is no basis for alleging that any level of malfeasance, misfeasance or nonfeasance occurred, which is necessary for any action against him.¹

CONCLUSION

The Trustee has been granted broad discretion under the Policy Manual. This is a privilege specifically granted in the Policy Manual. That discretion includes the authority to make exceptions to certain policies and the authority to amend or change these policies as noted above. There are sections throughout the Policy Manual that reference the Trustee's discretion. We admit that such discretion is not unlimited. However, the State Board of Accounts does not even acknowledge that this discretion exists and indeed omits from its Report relevant references to this discretion found in the Policy Manual.

Trustee Douglas received no personal financial benefit from Mizen's compensation. His sole objective in exercising his discretion was to compensate an exemplary employee. Consequently, Trustee Douglas does not concur with the conclusions in the Report.

Sincerely,


Gerald B. Coleman

cc: William Douglas
GBC/ent
307-001 Letter to Board of Accounts 060612.docx

¹ The Report also makes very questionable conclusions. For example, in referring to excessive hours worked, the Report states that "we would have expected to see a corresponding amount of output/work generated from the hours being charged. Upon what is this statement based? Has the Board of Accounts quantified the length of time it takes for a CFO to perform specific duties? In addition, the Report states that for audit purposes, "any" hours worked on Saturday, Sunday, holidays or in excess of twelve (12) hours or more were considered "excessive" for audit purposes. That statement has no basis in fact or reason. The Board is essentially concluding that work could not have been performed at these times, but presents no facts to support this statement.

INTER-OFFICE COMMUNICATION
Center Township Trustee's Office



DATE: December 30, 1997
TO: See Distribution Below

FROM: Mr. William E. Douglas
Chief Executive of Operations

RE: Comp Time

This is a reminder regarding our policy on accruing and taking comp time. First, in order to receive credit for comp time, you must obtain approval from the Trustee or his designee before you put in the extra time unless, of course, it is an emergency. If there is an emergency situation and it becomes necessary for you to work beyond your regular hours, you must notify administration as soon as possible so that the additional time can be properly recorded.

Second, when you accrue comp time, it must be taken within thirty (30) days from the date you earned it. In addition, comp time may not be carried over from one calendar year to another unless it is approved by the Trustee or his designee. Your cooperation in adhering to our policy regarding comp time is expected and appreciated.

WED/kmo

cc: Trustee Carl L. Drummer
Mr. Willie Smith
Human Resources
Payroll

Distribution List

Mr. David Barnard
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Ms. Iris Roberson
Ms. Cassandra Scott

INTER-OFFICE COMMUNICATION
Center Township Trustee's Office

-2-

DATE: July 21, 2003
TO: CTT Staff

FROM: Mr. William E. Douglas
Chief Executive of Operations

RE: *PTO – Calling-in vs. Scheduling*

This is a follow-up to the meeting we had regarding PTO (Paid Time Off).

For clarification purpose, calling-in requesting PTO should be the "exception" and not "the rule". The PTO concept was designed to help supervisors and managers better anticipate their daily coverage. When an employee anticipates they will be out of the office, they should immediately schedule that time off with their supervisor or with administration (when the supervisor is absent). If an employee call-ins in PTO, it is documented and becomes an occurrence (please review the PTO policy). The following situations warrant disciplinary action:

1. Verbal Warning - the employee will receive a documented verbal warning to be kept on file, for *five (5) occurrences of absence in a twelve-month period*. At the time of the verbal warning the supervisor will meet with the employee and attempt to find solutions.
2. Written Warning - the employee will receive a written reprimand for *six (6) occurrences of absence in any twelve (12) month period*. At the time of the reprimand the supervisor will meet with the employee and attempt to find solutions. The written reprimand will be placed in the employee's 201 Personnel File.
3. Documented Probation or Suspension - the employee will be placed on six-month probation or suspended for *seven (7) occurrences of absence in a twelve (12) month period* (providing that management has followed progressive discipline as defined in this section). The documented probation will be placed in the 201 Personnel File.
4. Termination for Absence - THE employee may be subject to termination should there be *three (3) additional occurrences of absence while on probation or after suspension*.

This attendance policy is consistent with our previous "sick call-in" policy, which has not changed. If you have any questions regarding this memo, feel free to contact me at ext. 223 or Ms. Townsend at 920-0300 ext 409.

Cc: Mr. Carl L. Drummer, Trustee
Ms. Bridget L. Townsend, Director of Human Resources

Paid Time Off

Effective June 30, 2003 (Revised September 12, 2003)

CARIBOU
C

Purpose: The purpose of Paid Time Off (PTO) is to increase the ability of employees to use leave time available to each employee in a manner that is more flexible and better meets the specific needs of our employees and their families. Paid Time Off (PTO) combines the paid leave benefits of vacation, sick, perfect attendance, and personal time into one (1) single type of paid leave time for all employees.

Paid Time Off (PTO) benefits are earned based upon the length of service, which are computed according to an employee's anniversary date, the number of hours worked that the employee worked or was compensated for by the Township during each bi-weekly pay period during the year beginning with their anniversary date as follows:

Full-time Employee - Seventy-five (75) Scheduled Hours Bi-Weekly:

Full Years of Completed Service	Maximum Paid Time Off to be Earned (Anniversary Date to Anniversary Date)
Less than 6 months of Employment	2.25 hours for every full pay period compensated Can not be used until after six (6) full months of employment with the Township have been completed
More than 6 months, less than 1 year	2.25 hours for every full pay period compensated All hours accumulated are available
1-5 years 2 yrs.	5.50 hours for every full pay period compensated
5 yrs, 1 day - 10 yrs. 3 yrs.	7.00 hours for every full pay period compensated
Over 10 yrs, 1 day 4 yrs.	8.50 hours for every full pay period compensated

Full time employees may accumulate a maximum of two hundred twenty-five (225) hours of PTO leave time. Any accumulations in excess of two hundred twenty-five (225) hours will be lost at the time the accumulation exceeds two hundred twenty-five (225) hours.

Part-time Employee (Minimum of Thirty Seven and One-half (37.5) Scheduled Hours Bi-Weekly):

Full Years of Completed Service	Maximum Paid Time Off to be Earned (Anniversary Date to Anniversary Date)
Less than 6 months of Employment	1.125 hours for every full pay period compensated Can not be used until after six (6) full months of employment with the Township have been completed
More than 6 months, less than 1 year	1.125 hours for every full pay period compensated All hours accumulated are available
1-5 years	2.75 hours for every full pay period compensated
5 yrs, 1 day - 10 yrs.	3.50 hours for every full pay period compensated
Over 10 yrs, 1 day	4.25 hours for every full pay period compensated

Negative Balance:

Employees are not allowed to carry a negative balance at any time. When an employee requests PTO, the Payroll department will verify that the employee has adequate PTO available to apply to the employee's pay for the pay period in which it was requested. If the employee does not have the time available to take, "Time Lost" will be applied for all hours which are not covered by available PTO hours.

No paychecks will be issued in advance of the normal scheduled distribution date.

First PTO Use:

All new employees (1 year or less) begin earning PTO during their first regularly scheduled pay period. The accumulator will begin the first day of the first full pay period scheduled and the time will appear on the employee's pay stub, however, the new employee is not entitled to use any PTO until they have completed 6 months and one (1) day of fully scheduled work for the Township. After that date, they may use up to the PTO accrued on their last regular pay stub.

PTO time may be taken in not less than two (2) hour increments. If an employee requests or uses PTO without prior approval, the employee may be charged with lost time until the employee's supervisor or in the supervisor's absence appropriate Administrative personnel have had an opportunity to review and approve or deny the request to use the vacation leave time requested or used.

To maintain effective and efficient operations, requested and scheduled PTO may need to be rescheduled by management according to workload demands.

No vacations may be taken in December or January without the approval of the employee's supervisor and appropriate Administrative personnel.

Optional Conversion of Paid Time Off

Hours accumulated that are greater than seventy five (75) hours of PTO, may be sold to the Township at the employee's then current pay rate, at a conversion rate of one (1) hour of PTO pay for every two (2) hours of PTO sold back to the Township (50%).

The election to sell PTO to the Township **MUST BE DELIVERED** to Administration, in writing, and may be elected only one (1) time each year: on the employee's anniversary date. The election is permanent, and irreversible. The election must be delivered to ADMINISTRATION, no later than noon the next day worked following the employee's anniversary date.

Separation of Employment

Definition of Good Standing: An employee must give his/her supervisor a *ten (10) working day notice* and be compensated for at least ninety percent (90%) of their last ten (10) days to receive payment for any accumulated PTO upon voluntary separation.

Upon separation from service, in good standing, an employee shall be compensated at the employees then current pay rate, for unused PTO up to a maximum of two hundred twenty five (225) hours. Under unusual circumstances and upon Administrative approval, less time may be considered sufficient, to allow an employee to separate from service in good standing. An employee dismissed (involuntarily separated) from the Township service, is not considered in good standing and forfeits all accrued and unused PTO.

Call-in PTO benefits will not be paid subsequent to an employee's resignation, unless the employee can prove that the cause of their absence was because of extenuating circumstances. ALL called-in PTO will be considered "Time-Lost" after an employee's has officially submitted their resignation. Administrative personnel will have an opportunity to review and approve or deny the request based on the documentation presented to verify the employees need to request time-off.

Employees who are terminated or separate employment *prior to the completion of six (6) months and one (1) day of employment will not be paid for accumulated unused PTO.*

Part time employees may accumulate a maximum of one hundred twelve and one-half (112.5) hours of PTO. Any accumulations in excess of one hundred twelve and one-half (112.5) hours will be lost at the time the accumulation exceeds one hundred twelve and one-half (112.5).

Eligibility to Earn PTO:

Yearly:

In order for an employee to advance an additional year of service, for use in calculating the rate that PTO is earned, the employee must be compensated by the Township for a minimum of ninety percent (90%) of the total scheduled time for the employee, for the period beginning on the employee's anniversary date and ending the day prior to their next subsequent anniversary date.

Per pay period:

All Employees must be compensated for 90% of the scheduled time each pay period in order to earn PTO for that pay period.

Exception: Under unusual circumstances and upon approval by the employee's supervisor and appropriate Administrative personnel, less time compensated may be, but is not required to be approved as sufficient, to allow an employee to add an additional year of service for purposes of accruing PTO.

The following employees are not entitled to any Paid Time Off benefits:

1. An employee who works under eighteen and one-half (18.5) hours weekly,
2. Seasonal employees, and
3. Interns

Conditions of Use: Employees must obtain approval at least two business days prior to the use of more than fifteen (15) consecutive hours of PTO. For purposes of scheduling staff and the use of PTO, holidays that fall immediately before, during, or immediately after the use of PTO are included in the consideration of required approval (Example: 2 PTO days before July 4, 1 PTO day before Memorial day, and 1 after, 1 day before or after Thanksgiving all require prior approval) of the employees department supervisor or if not available administration. The department supervisor or administration if the department supervisor is not available, may, but is not required to, approve the use of PTO with less than three days notice or after the use of PTO.

However, the employee must work the full scheduled workday before and the full scheduled workday following any requested and approved PTO. If the employee fails to work or has unpaid leave time the day before or the day after their scheduled vacation, the employee will not be paid for all consecutive days not worked or compensated immediately preceding or immediately subsequent to their approved vacation.

Exception: An employee may receive payment for PTO hours used and called in to the employee's supervisor, if there is proper verification (i.e. verified by a physician's statement, etc. - which gives specific dates of illness/service), and is approved by the employee's supervisor or in the supervisor's absence appropriate Administrative personnel. Administration has the right to approve or deny use of PTO based on many factors - i.e. past practice, past attendance record, attendance pattern, and any other factor that Administration deems appropriate.

Attendance Policies -

Excessive Absences with Available PTO:

The Following progressive disciplinary procedures will be followed for excessive absenteeism. For purposes of clarification, an occurrence of absence is defined as any absence from work due to an employee's illness and any unscheduled/unapproved absence from work. An occurrence will be counted for each group of successive hours up to full days absent or for non-successive absence.

Examples:

- Employee calls in PTO on Monday and Tuesday equals one (1) occurrence.
- Employee calls in PTO on Monday, equals one occurrence of absence, and if
- The same employee reports to work on Tuesday, but calls in PTO on Wednesday for two (2) hours, equals two occurrences.

Progressive Discipline

1. Verbal Warning- the employee will receive a documented verbal warning to be kept on file, for five (5) occurrences of absence in a twelve-month period. At the time of the verbal warning the supervisor will meet with the employee and attempt to find solutions.
2. Written Warning- the employee will receive a written reprimand for six (6) occurrences of absence in any twelve (12) month period. At the time of the reprimand the supervisor will meet with the employee and attempt to find solutions. The written reprimand will be placed in the employee's 201 Personnel File.
3. Documented Probation or Suspension- the employee will be placed on six-month probation or suspended for seven (7) occurrences of absence in a twelve (12) month period (providing that management has followed progressive discipline as defined in this section). The documented probation will be placed in the 201 Personnel File.
4. Termination for Absence- an employee may be subject to termination should there be three (3) additional occurrences of absence while on probation.

Excessive Absences without Available PTO:

1. Employees will receive a verbal warning for the 1st requested PTO if the employee has a zero balance of PTO benefits.
2. Employees will receive a written warning for the 2nd requested PTO if the employee has a zero balance of PTO benefits.
3. Should the employee incur a 3rd absence without PTO available, the employee will be counseled by their supervisor and an Administrative designee to identify problems and hopefully find solutions. Such resolutions will be documented and signed by the employee and supervisor. The employee may be suspended or placed on 90-day probation to demonstrate adherence to resolutions agreed upon. Copies of resolutions will be forwarded to Administration and to the employee's 201 Personnel File.
4. Should the employee incur a 4th absence after suspension or while on probation, such employee may be subject to termination.

Excessive Tardiness

The following progressive disciplinary steps will be taken for excessive tardiness. *For purpose of clarification, employees are considered to be tardy one (1) minute or more after their scheduled reporting start time and one (1) minute or more after their scheduled reporting time from lunch. However, for discipline purposes an occurrence of tardiness is defined as reporting three (3) minutes after our scheduled start time, or and/ one (1) minute after your scheduled time from lunch.* Employees will be docked when reporting for work more than 3 minutes past their scheduled starting time.

Tardiness Progressive Discipline

1. Verbal Warning – The employee will receive a verbal warning and written documentation of the warning kept on file for seven (7) occurrences of tardiness in any twelve (12) month period. At the time of the warning, the supervisor will meet with the employee and try to identify solutions.
2. Written Warning – The employee will receive a written reprimand for ten (10) occurrences of tardiness in any twelve (12) month period. At the time of the reprimand, the supervisor will advise the employee that three (3) additional tardies in that twelve (12) month period will cause the employee to be placed on six (6) month probation. *The written reprimand will be placed in the employee's 201 Personnel File*
3. Documentation Probation – Should the employee incur four (4) additional tardies while on probation, the employee will be subject to termination. *The documented probation will be placed in the personnel 201 file and copies of resolutions will also be forwarded to Administration.*

Attendance Policy Exceptions

The above attendance policies are not intended to negatively impact employees who historically come to work and report in a timely fashion. For those reasons, please see the following exceptions.

1. Approved funeral leave.
2. Documented serious illness, which may require time off for treatment or physician visits for extended periods of time, or in some cases for shorter time frames.
3. Family and medical leave situations that have been administratively approved.
4. Any approved use of "personal days" off.
5. Approved use of vacation benefits.

Employees on approved Family/Medical Leave and employees with documented serious illness are exempt from disciplinary measures of the Excessive Absenteeism Policy, but are not exempt from the Excessive Tardiness Policy.

Exceptions to Attendance Policies will be determined on a case-by-case basis by the Trustee, CEO, or Administrative designee.

REVISI0NS - INCLUDED

Greetings Assuriters:

Welcome to the Center Township Trustee Office family. As we strive to maintain an efficient and professional work ethic throughout the work force, we must keep focused on our mission.

The primary mission of the Center Township Trustee Office is to provide emergency and short-term assistance to the poor and needy; to deal with everyone in a courteous and respectful manner; to help clients become self-sufficient; and to make every effort to be fiscally responsible and accountable to the public.

When everyone commits to excellence in our daily performance, we then deserve the trust the public has invested in us.

I deeply appreciate your commitment, and again welcome to our family team.

Sincerely,

Carl L. Brunner

Carl L. Brunner,
Trustee

This 15th day of October, 1997

**EMPLOYEE HANDBOOK AND
PERSONNEL POLICY MANUAL**

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APPLICANT REQUIREMENTS

- A. Written applications must be completed in the office of Human Resources.
- B. If being considered for hire, applicants must complete a new employee physical examination which includes drug screening.

NEW HIRE REQUIREMENTS

- A. Confirmation of employment is contingent on the successful completion of the new employee physical examination.
- B. All employees must complete all required post-hire documentation in the Human Resources Department.
- C. All new employees must successfully complete a 90 day new employee probationary period.

The successful completion of the above stated requirements in no way represents a contract or permanent employment status. The Center Township Trustee Office of Marion County remains an "At Will" employer.

Employees whose salaries are paid via contracts, grants, or other agencies but who are assigned to the Center Township workforce will be separated from the CTT workforce when such funding is not available.

SERVICE - YOUR JOB RESPONSIBILITY

Client services are the chief responsibility of every Center Township Trustee Office employee. Courtesy and efficiency mark the Center Township Trustee Office's reputation for fine service and quality assistance. You make the winning difference by greeting clients with a warm smile and gracious sincere welcome - and by showing a genuine concern for their well being. The clients are your reason for being here and their satisfaction helps insure your success.

Purpose

The Personnel Policy Manual is designed to provide employees with information regarding policies established by the Center Township Trustee Office. Managers should always consult this Manual before explaining, before training, and before acting on these policies and procedures.

Application Of Policy

- A. This Manual applies to all full-time and part-time Center Township Trustee and Marion County employees. This Manual supersedes any and all policies in effect which are inconsistent with the policies contained in this Manual.
- B. This Manual does not grant an entitlement or an expectation of continuous employment. This Manual in no way grants property interests or contractual rights to employees, and may be changed or amended at any time at the discretion of the Trustee or Trustees Designee. All Center Township Trustee employees are considered employees at will.
- C. The Trustee's offer and an employee's acceptance of a different position or promotion in the Trustee Office is a joint revocation of any prior job assignment.
- D. The trustee will provide equal employment opportunity in all aspects of employment. All decisions throughout the employment process shall be made without regard to race, color, national origin, ancestry, religion, sex, age, handicap status, Vietnam veteran status, or disabled veteran status.

EMPLOYMENT AGREEMENT

U E

THIS EMPLOYMENT AGREEMENT ("Agreement") is entered into as of November 19, 2001, by and between Center Township of Marion County, Indiana ("Township"), and Alan S. Mizen, CPA ("Employee").

RECITALS

WHEREAS, Township is a local government entity located in Marion County, Indiana, the business and operation of which is overseen by the Center Township Advisory Board ("Board") and the Center Township Trustee ("Trustee");

WHEREAS, Township desires to employ Employee, and Employee desires to accept such employment, pursuant to the terms of this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and in consideration of the mutual covenants, promises and agreements herein contained, the parties hereto agree as follows:

AGREEMENT

1. Term. This Agreement shall become effective on the date first above written ("Commencement Date") and shall continue in effect for a period terminating at midnight on December 31, 2005 ("Termination Date"), unless terminated earlier by Township or Employee pursuant to the terms set forth herein ("Term").

2. Option to Renew. This Agreement will automatically renew for additional term(s) of four (4) years ("Renewal Period"), under the same terms and conditions as the existing agreement, unless either party submits written notice of intent not to renew to the other party at least thirty (30) days prior to the Termination Date of the Agreement.

4. General Provisions. Employee will comply with all applicable requirements and guidelines as contained in Township's Employee Handbook and Personnel Policy Manual, and subsequent revisions approved by Township if not covered elsewhere in this agreement, or as directed by Trustee or his designee.

5. Salary. Township shall pay Employee ~~\$ salary of \$12,000.00~~ per year, plus annual salary adjustments of not less than the average annual increase for all employees of Township, as budgeted, for the services of Employee, payable at the regular biweekly payroll periods, and less all applicable deductions and withholdings.

6. Waive Probationary Period. Township waives the Probationary Period for newly hired employees as contained in Township's Employee Handbook and Personnel Policy Manual (currently as described on page 35 and 36 therein) and subsequent revisions, as approved by Township, Board and/or Trustee, for Employee.

7. Duties and Position. Employee shall be employed by Township in the capacity of Chief Financial Officer ("CFO"). Employee's responsibilities and duties will primarily be those outlined in Employee's job description, a copy of which is attached as Exhibit A. Employee shall also be responsible for the duties and responsibilities as assigned to him from time to time by Trustee or Trustee's designee, consistent with the duties and responsibilities customarily performed by a CFO and/or consistent with his

skills and experience. Responsibilities and duties may be modified by Trustee, or Trustee's designee from time to time at their discretion. Employee shall report directly to Trustee or Trustee's designee.

8. Employee to Devote Full Time to Township. Employee will devote his full time, attention, and energies to the business of Township. Employee is not prohibited from making personal investments in any businesses as long as such investments do not conflict, as determined by Township and/or Trustee, with Employee's performance of his duties and responsibilities in his position as CFO.

Employee hereby elects a condensed work week schedule under Township's optional Flex Time Policy, as contained in Township's Employee Handbook and Personnel Policy Manual and subsequent revisions, as approved by Township, Board and/or Trustee. Employee hereby elects a base schedule of four (4) days per week, ten (10) hours per day (usually Monday through Thursday). Work schedules may be adjusted periodically to accommodate the work load and staffing requirements of Township. Township approves Employee's election of a flex time schedule as described above. Employee shall be eligible to participate in Township's "Compensatory Time" program, as contained in Township's Employee Handbook and Personnel Policy Manual (currently as described on page 34 therein) and subsequent revisions, as approved by Township, Board and/or Trustee.

9. Confidential or Proprietary Information.

a. During the term of this Agreement, Employee will have access to and become familiar with various trade secrets and highly confidential information of Township, including, but not necessarily limited to, documents and information regarding Township's business practices, investments, accounting or other business records, plans, schedules, contracts, services, systems, leases, marketing programs, pricing, costs, specialized requirements of customers, vendors, contractors, and any other entity which deals with Township in its normal course of business, prospective applicants for employment, current employees, internal managerial accounting systems, and information systems. ("Confidential Information") Employee acknowledges that such Confidential Information and trade secrets are owned and shall continue to be owned solely by Township.

b. Employee acknowledges that during the course of his employment and during the term of this Agreement, Employee shall have access to, learn, be provided with, prepare, or create Confidential Information, all of which is of substantial value to Township's business and the disclosure of which would be harmful to Township.

c. In the event, either during the term of this Agreement or at any time thereafter, Employee should disclose or threaten to disclose to any other person or entity any such Confidential Information, use for his own benefit or for the benefit of any other person or entity any such Confidential Information, or make copies or notes of any such Confidential Information, except as may be required in the normal course of Employee's duties, such conduct would be inconsistent with and a breach of the confidence and trust inherent in Employee's position with Township, unless such information has already become common knowledge, or unless Employee is compelled to disclose such information by governmental process.

d. Employee covenants to Township that both during the term of this Agreement and following the date of termination of his employment, he shall not, either directly or indirectly, or through any person or other entity, or by any other means use Confidential Information or trade secrets for any purpose whatsoever or divulge such information to any person other than Township or persons to whom Township has given consent, unless such information has already become common knowledge, or unless Employee is compelled to disclose such information by governmental process.

Employee shall designate in writing filed with Township, or if no such person shall be designated, to his estate as a lump sum benefit, Employee's salary due and owing through the end of the month of his death, along with any final expense reimbursements due the Employee in accordance with Section 9 of this Agreement. The making of payments described in this subsection shall fully discharge Township's obligations to Employee and his personal representative with respect to this Agreement.

b. Disability. If, as a result of Employee's incapacity due to physical or mental illness, Employee shall have been absent from his duties under this Agreement for forty-five (45) consecutive calendar days during his employment, Township may terminate Employee's employment under this Agreement. In the event of termination of the Agreement pursuant to such physical or mental illness, Employee shall continue to receive his base salary for one (1) month following such termination, along with any final expense reimbursements due Employee in accordance with Section 9 of this Agreement. Payment of any amount referenced in this subsection shall be made on the condition that Employee executes a release of claims against Township, its employees, and agents, which release shall be prepared by and presented to Employee as soon as practical before or after the Date of Termination. An example of such a release, which may be modified by Township, is attached hereto as Exhibit B.

c. For Cause. Township may terminate Employee for Cause. For purposes of this Agreement, Township shall have "Cause" to terminate Employee's employment under this Agreement upon Township's determination that one of the following has occurred: (a) Employee's material breach of this Agreement; (b) the failure by Employee to reasonably perform any or all of his assigned duties or responsibilities, as set forth in this Agreement or otherwise assigned by Township, Board, Trustee, or Trustee's designee; (c) the engaging by Employee in misconduct which is deemed by Township to be detrimental or injurious to it, monetarily or otherwise; (d) the arrest or conviction of Employee of a crime that is deemed by Township to be detrimental or injurious to Township; or (e) a material violation of Township's policies or practices. In the event of termination for Cause, Employee shall be paid any unpaid base salary due up to the date of termination (on a pro rata basis), along with any final expense reimbursements due Employee in accordance with Section 9 of this Agreement.

d. Without Cause. This Agreement may be terminated by either party without cause.

1) By Township. Township may terminate this Agreement without cause at any time upon seven (7) days' written notice to Employee. If Township requests, Employee will continue to perform his duties and may be paid his regular salary up to the date of termination (on a pro rata basis). In addition, Township will pay Employee, on the date of the termination, a lump-sum severance allowance of 150 days of the then current daily pay level, less all applicable deductions and withholdings, along with any final expense reimbursements due Employee in accordance with Section 9 of this Agreement. Payment of any amount referenced in this subsection (12(d)(1)) shall be made on the condition that Employee executes a release of claims against Township, its employees, and agents, which release shall be prepared and presented to Employee as soon as practical before or after the Date of Termination. An example of such a release, which may be modified by Township, is attached hereto as Exhibit B.

2) By Employee. Employee may terminate this Agreement without cause at any time upon twenty one (21) days' written (21) days' written notice to Township. Employee may be required to perform his duties and will be paid his regular salary up to the date of termination (on a pro rata basis), along with any final expense reimbursements due Employee in accordance with Section 9 of this Agreement, but Employee shall not be eligible for nor receive any severance allowance upon termination pursuant to this subsection 12(d)(2).

e. Mutual Agreement. This Agreement may be terminated at any time upon the mutual agreement of the parties. In such an event, Township agrees to pay Employee any unpaid base salary up

e. In the event that a court of competent jurisdiction determines that the provisions of Section 8, or any part thereof, are invalid or unenforceable by reason of overly broad or excessive restrictions or otherwise, then the parties to the Agreement may request such court to and the court shall modify such restrictions or sections to the extent necessary in order that the same shall be valid and enforceable and to enforce the same to that extent.

f. Upon the request of Township or upon Employee's termination of employment for any reason whatsoever, all documents, records, notebooks, equipment, price lists, programs, drawings, diagrams, specifications, business and accounting records, and all other materials which refer or relate to any aspect of the business of Township, and all other Township property, which are in the possession of Employee or under his custody or control, including all copies thereof, shall be immediately returned to Township.

g. The parties to this Agreement acknowledge that any breach, violation or default by Employee of the provisions contained in Section 8 of this Agreement would result in irreparable harm and damage to Township, which harm and damage would be extremely difficult to quantify and, that monetary damages would not be an adequate remedy for such breach, violation or default and, accordingly, Employee consents to the jurisdiction of a court of equity and: (i) the entry of an injunction, temporary or permanent, if appropriate, enjoining Employee from divulging the Confidential Information or trade secrets of Township in violation of the provisions of Section 8 hereof, from engaging in other commercial activity in violation of the provisions of Section 8 hereof; (ii) the entry by said court of an injunction, enjoining Employee if appropriate; and (iii) the entry by said court of an order requiring Employee to deliver to Township documentation or other property which belongs to Township, as required by Section 8.

h. Nothing in this Section 8 is intended to supersede the Access to Public Records Act (I.C. § 5-14-3-1 *et seq.*)

10. Reimbursement of Expenses. Employee may incur reasonable and customary expenses for furthering Township's business, including but not limited to: expenses for continuing professional education ("CPE") as required to maintain Active License Status as a Certified Public Accountant, as issued by the Indiana Professional Licensing Agency; professional publications; staff training; operations, systems, and staffing evaluations; travel; and similar reasonable and customary items. Township shall reimburse Employee for all reasonable and customary business expenses after Employee presents an itemized account of expenditures, pursuant to Township's policy. Pre-approval will be obtained consistent with Township's policy and direction.

11. Compensated Leave. Employee shall be entitled to receive, if otherwise eligible, all applicable compensated leave (vacation, sick, personal, etc.) as found in Township's Employee Handbook and Personnel Policy Manual and subsequent revisions, as approved by Township, Board, and/or Trustee, at full pay.

12. Public Employee Retirement Fund ("PERF"). To the extent Township is or becomes a participant in the PERF program during the term of this Agreement, Employee's position shall be treated as a PERF-covered position, with employer-paid contributions effective on and after November 19, 2001, or as soon thereafter as possible, and continuing until the termination of this Agreement.

13. Termination of Agreement. Employee's employment under this Agreement may be terminated under any of the following circumstances:

a. Death. Employee's employment under this Agreement shall terminate upon his death. If Employee's employment shall be terminated by reason of his death, Township shall pay to such person as

to the date of termination (on a pro rata basis), which may be due Employee as provided under Section 5 of this Agreement, along with any final expense reimbursements due Employee in accordance with Section 9 of this Agreement.

f. Effect of Termination on Renewal. Termination of the Agreement or Employee's employment under this Section 12 shall void the automatic renewal provision described in Section 2 with regard to any subsequent Renewal Period.

14. Notice of Termination. Any termination of Employee's employment by Township or by Employee (other than termination by reason of the Employee's death) shall be communicated by written Notice of Termination to the other party of this Agreement, as provided in Section 19(a).

15. Assistance in Litigation. Employee shall, upon reasonable notice, furnish such information and proper assistance to Township as it may reasonably require in connection with any litigation in which it is, or may become, a party either during or after employment. If such information and assistance is required after the termination of Employee's employment or the termination of this Agreement, Employee shall be compensated for time spent assisting Township at a rate not less than Employee's daily compensation level immediately preceding termination of Employee's employment or this Agreement. However, this section 14 shall not apply to litigation regarding or arising out of this Agreement, if such litigation is between Employee and Township.

16. Settlement by Arbitration. Any claim or controversy that arises out of or relates to this agreement, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association. Judgment upon the award rendered may be entered in any court with jurisdiction.

17. Limited Effect of Waiver by Trustee. Should Township waive breach of any provision of this agreement by Employee, such waiver will not operate or be construed as a waiver of further breach by Employee.

18. Severability. If, for any reason, any provision of this Agreement is held invalid, all other provisions of this Agreement shall remain in effect. If this Agreement is held invalid or cannot be enforced, then to the full extent permitted by law any prior agreement between Township and Employee shall be deemed reinstated as if this Agreement had not been executed.

19. Whole Agreement; Oral Modifications Not Binding. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the employment of Employee by Township and contains all of the covenants and agreements between the parties with respect to such employment in any manner whatsoever. Any modification or amendment of this Agreement will be effective only by written instrument signed by the parties hereof.

20. General. This Agreement is further governed by the following provisions:

a. Notices. All notices relating to this Agreement shall be in writing and shall be either personally delivered, sent by facsimile transmission (receipt confirmed) or mailed by certified mail, return receipt requested, to be delivered at such address as is indicated below, or at such other address or to the attention of such other person as the recipient has specified by prior written notice to the sending party. Notice shall be effective when so personally delivered, one (1) business day after being sent by facsimile transmission, or five (5) days after being mailed.

To Township: Center Township of Marion County, Indiana
863 Massachusetts Ave.
Indianapolis, Indiana 46204
Attn: Trustee

To Employee: Alan S. Mizen
7502 East State Road 334
Zionsville, Indiana 46077-8893

(or to such other address provided to Township)

b. Assignment. The rights and benefits of Township under this Agreement shall be transferable, and all covenants and agreements hereunder shall inure to the benefits of and be enforceable by or against its successors and assigns. Employee may not delegate his duties or assign his rights hereunder.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first above written.

CENTER TOWNSHIP OF MARION COUNTY, INDIANA

By: Carl L. Drummer, Trustee

EMPLOYEE:

Alan S. Mizen
Alan S. Mizen, CPA

CENTER TOWNSHIP TRUSTEE
MARION COUNTY
SUMMARY OF QUESTIONED COSTS

	<u>Amount</u>
Alan S. Mizen, former Township CFO:	
Questioned Cost - Salary of Township Chief	
Financial Officer, pages 4 through 7	
Compensable Time Overpayment	\$ 68,399.42
Overtime Overpayment	95,875.84
Paid Time Off (PTO) Overpayment	<u>6,633.90</u>
Total	<u><u>\$ 170,909.16</u></u>