

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

AUDIT REPORT

OF

BOARD OF COUNTY COMMISSIONERS

WARRICK COUNTY, INDIANA

January 1, 2011 to December 31, 2011



**FILED**  
09/28/2012



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COUNTY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
President of the County Council	Gary Meyer	01-01-11 to 12-31-12
President of the Board of County Commissioners	Don Williams Tim Mosbey	01-01-11 to 12-31-11 01-01-12 to 12-31-12



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TO: THE OFFICIALS OF WARRICK COUNTY

We have audited the records of the Board of County Commissioners for the period from January 1, 2011 to December 31, 2011, 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 Result and Comment. The financial transactions of this office are reflected in the Annual Report of Warrick County for the year 2011.

STATE BOARD OF ACCOUNTS

August 27, 2012

BOARD OF COUNTY COMMISSIONERS  
WARRICK COUNTY  
AUDIT RESULT AND COMMENT

**FEES**

On July 25, 2011, the Board of County Commissioners passed Ordinance 2011-18, which authorizes a fifty dollar (\$50.00) Drug Court Substance Offense Fee and a ten dollar (\$10.00) Drug Court Non Substance Offense Fee, which are being collected, but are not authorized by a specific statute or Supreme Court Rule.

Indiana Code 5-7-2-2 states:

"No county or township officer in this state shall, under color of the officer's office, charge, tax up, or receive, or permit to be taxed up or received, in relation to any service in or about the officer's office, any fee or sum of money except such fee or sum of money as is plainly specified in IC 33-37 and IC 36-2 without resort to implication."

Indiana Code 36-1-3-5(b) states: "A unit may exercise any power it has to the extent that the power: (1) is not expressly denied by the Indiana Constitution or by statute."

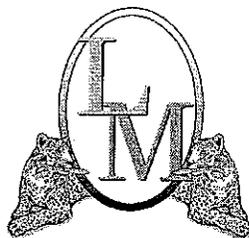
BOARD OF COUNTY COMMISSIONERS  
WARRICK COUNTY  
EXIT CONFERENCE

The contents of this report were discussed on September 17, 2012, with Tim Mosbey, President of the Board of County Commissioners. The Official Response has been made a part of this report and may be found on pages 6 through 16.

Correspondence to:

415 East Main Street  
P.O. Box 250 : Boonville, IN 47601

S. Anthony Long  
Warren C. Mathies  
Samuel Adam Long



**LONG & MATHIES**  
LAW FIRM, P.C.

By appointment only:

110 East Washington Street  
Indianapolis, Indiana 46204

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## OFFICIAL RESPONSE

September 19, 2012

State Board of Accounts  
302 W. Washington Street  
Room E-418  
Indianapolis, Indiana 46204-2765

RE: Indiana State Board of Accounts Audit of Warrick County  
Warrick County Ordinance 2011-18

### TO WHO IT MAY CONCERN:

This letter shall serve as the Official Response of the Board of Commissioners of Warrick County, Indiana (hereinafter "Board") in relation to the Indiana State Board of Accounts audit of Warrick County and the initial finding regarding Warrick County Ordinance 2011-18.

Warrick County is a "unit" as defined by I.C. § 36-1-2-23. As a "unit," Warrick County is vested with the powers granted to it pursuant to "Home Rule" as established by I.C. § 36-1-3, *et seq.* Pursuant to Home Rule and *Creekmore v. State*, 858 N.E.2d 230 (Ind.Ct.App.2006)<sup>1</sup>, the Board adopted Warrick County Ordinance 2008-04 established fees imposed on defendants convicted of misdemeanor and felony offenses in order to provide a more stable revenue stream for the Warrick County Court Substance Abuse Program and the Warrick County Drunk Driving and Drug Court Program (hereinafter collectively referred to as "CSAPS"). This fee was established as it was necessary for the effective operation of the CSAPS and the continued successful participation of local residents.

Ordinance 2008-04 was not adopted in haste. In addition to the aforementioned Indiana Code citations, Warrick Superior Court No. 1 Judge, the Hon. Keith A. Meier, inquired into the validity of such a fee by contacting the Office of the Indiana Attorney General. On February 7, 2008, Deputy Attorney General and Chief Counsel of the Advisory Section, Susan W. Gard, wrote a letter, a copy of which is attached hereto, to Judge Meier indicating that the *Creekmore* decision was consistent with the Attorney General's position on the issue of the collection of fees.

<sup>1</sup> "Notwithstanding our conclusion that a 'prosecutor's collection fee' was not authorized pursuant to I.C. § 33-37-4-1, such a fee may be imposed where it is otherwise authorized by, *e.g.*, the Indiana Home Rule statute and a valid county ordinance." *Creekmore* at 232.

In 2011 the Board determined that the CSAPS, as operated by Warrick Superior Court No.1, continue to benefit Warrick County and its residents through the rehabilitation and education of criminal offenders rather than incarceration. Upon learning of grant cut-backs and other economic problems beyond our local control and the resulting and increasing financial pressure pushing CSAPS to the brink of unsustainability, the Board passed Warrick County Ordinance 2011-18 which increased the fees established in 2008-04 and applied said funds to CSAPS to further protect its participants and its existence.

While the Board believes Ordinance 2008-04 and its successor 2011-18 are valid and encourages the State Board of Accounts to consider the foregoing as part of its determination, the Board of Commissioners, through Warrick County Ordinance 2012-30, have nonetheless suspended the collection of said fees pending final determination of their validity.

Respectfully,

LONG & MATHIES LAW FIRM,  
A Professional Corporation



---

S. Adam Long

SAL/mw

Encls: Ordinance 2008-04  
Ordinance 2011-18  
*Creekmore v. State* 858 N.E.2d 230 (Ind.Ct.App.2006)  
February 7, 2008 Letter from Dep. Attorney General Gard

cc: Warrick County Board of Commissioners  
Roger Emmons, County Administrator  
Judge K.A. Meier  
Mr. Alan C. Linneweber, 8244 Heather Drive, Newburgh, Indiana 47630  
Krystal Powless, County Council  
Sarah Redman, County Clerk

WARRICK COUNTY COMMISSIONERS ORDINANCE #2008- 04

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF  
WARRICK COUNTY, INDIANA, IMPOSING A FIVE DOLLAR (\$5.00) FEE  
ON ALL MISDEMEANOR AND FELONY CASES

WHEREAS, the Warrick Superior Court No. 1 conducts the Warrick County Alcohol and Drug Services Programs (CSAPS); and

WHEREAS, the Alcohol and Drug Services Programs provide benefits to Warrick County through its goal of rehabilitation rather than incarceration; and

WHEREAS, the current funding for the Alcohol and Drug Services Programs is inadequate without the imposition of an additional fee to be assessed and collected on all misdemeanor and felony cases as set forth below:

IT IS THEREFORE ORDAINED BY THE BOARD OF COMMISSIONERS OF  
WARRICK COUNTY, INDIANA, AS FOLLOWS:

SECTION 1. The Board of Commissioners of Warrick County, pursuant to the Indiana Home Rule Act and other authority, now sets an additional fee of five dollars (\$5.00) which shall be added as a part of the costs in all cases involving violations of felonies or misdemeanors filed in any Circuit or Superior Court of Warrick County, Indiana.

SECTION 2. The Clerk of the Warrick Circuit and Superior Courts shall assess and collect the five dollar (\$5.00) fee, in addition to other statutory fees, and shall deposit the fee in the Alcohol and Drug Services Programs fund.

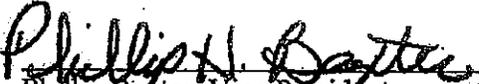
SECTION 3. This ordinance shall become effective upon passage and publication.

IT IS SO ORDAINED.

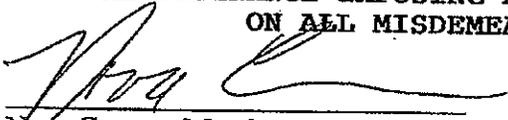
Dated this 12th day of March, 2008, by the Board of  
Commissioners of Warrick County, Indiana.

BOARD OF COMMISSIONERS OF WARRICK COUNTY, INDIANA

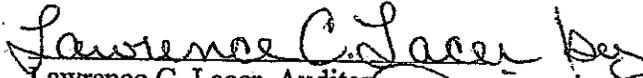
  
Don Williams, President

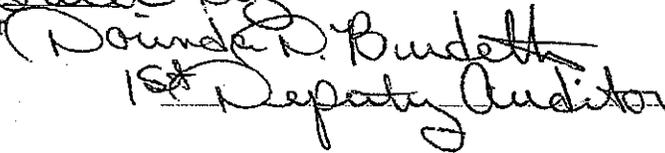
  
Phillip Baxter, Vice President R.E.

WARRICK COUNTY COMMISSIONERS ORDINANCE NO. 2008 - 04  
AN ORDINANCE IMPOSING A FIVE DOLLAR (\$5.00) FEE  
ON ALL MISDEMEANOR AND FELONY CASES

  
\_\_\_\_\_  
Nova Conner, Member

ATTEST:

  
Lawrence C. Lacer, Auditor  
Warrick County, Indiana

  
Dorenda D. Burdett  
1st Deputy Auditor

**WARRICK COUNTY COMMISSIONERS ORDINANCE #2011- 18**

**AN ORDINANCE OF THE BOARD OF COMMISSIONERS  
OF WARRICK COUNTY RESCINDING ORDINANCE 2008-04  
AND  
AMENDING SECTION 37.21 OF THE CODE OF ORDINANCES  
OF WARRICK COUNTY, INDIANA**

WHEREAS, the Warrick County Commissioners of Warrick County, Indiana passed Ordinance #2008-04 entitled "An Ordinance of the Board of Commissioners of Warrick County, Indiana, Imposing a Five-Dollar (\$5.00) Fee on all Misdemeanor and Felony Cases"; and

WHEREAS, The Code of Ordinances of Warrick County, Indiana codified Ordinance 2008-04 as Section 37.21 of the Code; and

WHEREAS, the Warrick Superior Court No. 1 continues to operate and maintain the Warrick County Court Substance Abuse Program and the Warrick County Drunk Driving and Drug Court Program (herein collectively referred to as CSAPS); and

WHEREAS, the CSAPS continue to benefit Warrick County through the rehabilitation and education of criminal offenders rather than incarceration; and

WHEREAS, due to inflation and other economic factors, the current funding for the CSAPS is inadequate to sustain these programs; and

WHEREAS, increasing the local fee to be assessed and collected on all misdemeanor and felony cases as originally established under Ordinance 2008-04 and codified in Code of Ordinances Section 37.21 "Additional Fee for All Misdemeanor and Felony Cases" will provide much needed financial aid to the CSAPS.

**IT IS THEREFORE ORDAINED BY THE BOARD OF COMMISSIONERS OF  
WARRICK COUNTY, INDIANA, AS FOLLOWS:**

**SECTION 1.** Warrick County Board of Commissioners Ordinance 2008-04 is hereby rescinded.

**SECTION 2.** AMENDMENT TO SECTION 37.21 OF THE CODE OF ORDINANCES OF  
WARRICK COUNTY

Title 3 "Administration"; Chapter 37 "Funds and Fees" and Section § 37.21 "Additional Fee for All Misdemeanor and Felony Cases" of the Code of Ordinances of Warrick County, Indiana is amended by re-titling and amending said section to read as follows:

"§ 37.21 Additional Felony and Misdemeanor Fees

- A. The Board of Commissioners of Warrick County, pursuant to the Indiana Home Rule Act and other authority, now establishes a local fee of Ten Dollars (\$10.00) which shall be added as a part of the costs in all felony and misdemeanor cases in which a defendant is found guilty of one or more offenses EXCEPT in those cases in which a defendant has been found guilty of one or more offenses under I.C. 35-48-4 (Controlled Substances), I.C. 16-42-19 (Legend Drug Act), I.C. 9-30-5 (OVWI), I.C. 9-30-6-8.7 (violation of Ignition Interlock), and I.C. 7.1-5 (Alcoholic Beverages).
- B. The Board of Commissioners of Warrick County, pursuant to the Indiana Home Rule Act and other authority, now establishes a local fee of Fifty Dollars (\$50.00) which shall be added as a part of the costs in all felony and misdemeanor cases in which a defendant is found guilty of one or more offenses under I.C. 35-48-4 (Controlled Substances), I.C. 16-42-19 (Legend Drug Act), I.C. 9-30-5 (OVWI), I.C. 9-30-6-8.7 (violation of Ignition Interlock), and I.C. 7.1-5 (Alcoholic Beverages).
- C. The Clerk of the Warrick Circuit and Superior Courts shall assess and collect the Ten Dollar (\$10.00) fee and the Fifty Dollar (\$50.00) fee, in addition to other local and statutory fees, and shall deposit the fee in the Drug and Alcohol User Fee Fund (which at present, is fund 379 in the Warrick County Auditor's Office)."

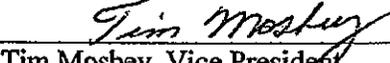
SECTION 3. This ordinance shall become effective thirty (30) days subsequent to passage and publication.

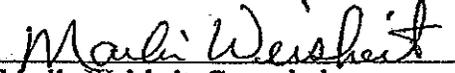
Dated this 25<sup>TH</sup> day of JULY, 2011, by the Board of Commissioners of Warrick County, Indiana.

**PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF WARRICK COUNTY, STATE OF INDIANA THIS 25<sup>TH</sup> DAY OF JULY, 2011.**

BOARD OF COMMISSIONERS OF  
WARRICK COUNTY, INDIANA

  
Don Williams, President

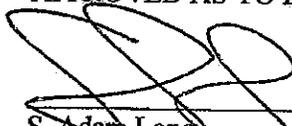
  
Tim Mosbey, Vice President

  
Marlin Weisheit, Commissioner

ATTEST:

  
\_\_\_\_\_  
L.B. Dugan  
Warrick County Auditor

APPROVED AS TO LEGAL FORM:

  
\_\_\_\_\_  
S. Adam Long  
LONG & MATHES LAW FIRM  
A Professional Corporation  
County Attorney

858 N.E.2d 230  
(Cite as: 858 N.E.2d 230)

**H**

Court of Appeals of Indiana.  
Christopher CREEKMORE, Appellant-Defendant,  
v.  
STATE of Indiana, Appellee-Plaintiff.

No. 43A03-0509-CR-466.  
Dec. 13, 2006.

**Background:** Following a guilty plea, defendant was convicted in the Kosciusko Superior Court, James C. Jarrette, J., of multiple counts of check deception. Defendant appealed. The Court of Appeals, 853 N.E.2d 523, affirmed in part, reversed in part, and remanded.

**Holding:** On petition for rehearing, the Court of Appeals, Friedlander, J., held that although prosecutor's collection fee was impermissible, the imposition of a fee for collection of a dishonored check is not impermissible where authorized.

Petition denied.

## West Headnotes

**[1] Appeal and Error 30 ↪832(4)**

30 Appeal and Error  
30XV Hearing  
30XV(B) Rehearing  
30k829 Rehearing  
30k832 Grounds  
30k832(4) k. Contentions Other  
Than Those Made on the Hearing. Most Cited Cases  
A petition for rehearing in the Court of Appeals must rely on the same theory as that advanced in the original brief.

**[2] Costs 102 ↪292**

102 Costs  
102XIV In Criminal Prosecutions

102k292 k. Liabilities of Defendant. Most Cited Cases

The imposition of a fee by a local government unit for the collection of a dishonored check is not impermissible, despite Court of Appeals holding that a prosecutor's collection fee was not authorized pursuant to the statute governing the collection of court costs; such a fee may be imposed where it is otherwise authorized. West's A.I.C. 33-37-4-1.

\*231 J. Brad Voelz, Warsaw, IN, Attorney for Appellant.

Steve Carter, Attorney General of Indiana, Matthew D. Fisher, Deputy Attorney General, Indianapolis, IN, Attorneys for Appellee.

**OPINION ON REHEARING**

FRIEDLANDER, Judge.

In a published opinion, we affirmed in part and reversed and remanded in part the sentence imposed upon Creekmore's multiple convictions of Check Deception.<sup>FN1</sup> See *Creekmore v. State*, 853 N.E.2d 523 (Ind.Ct.App.2006). The pertinent facts are set out in that opinion and need not be repeated in detail here. The State petitions for rehearing, urging us to reconsider our conclusion that the trial court abused its discretion by imposing collection fees. We deny the petition, but write to clarify our original opinion.

FN1. Ind.Code Ann. § 35-43-5-5 (West, PREMISE through 2006 Public Laws approved and effective through March 15, 2006).

Creekmore wrote thirteen dishonored checks to five companies. The State charged Creekmore with thirteen counts of check deception, to which Creekmore pleaded guilty. Following a hearing, the trial court imposed upon Creekmore a "prosecutor's collection fee" for each of the thirteen counts. *Id.* at 527. Creekmore appealed the sentence imposed upon only five of the thirteen counts, contending

858 N.E.2d 230  
(Cite as: 858 N.E.2d 230)

the trial court abused its discretion when it ordered him to pay \$90 in "prosecutor's collection fees." See *Creekmore v. State*, 853 N.E.2d at 532 n. 9. Upon appeal, we held the imposition of the "prosecutor's collection fees" was an abuse of discretion because the fees were not authorized by Ind.Code Ann. § 33-37-4-1 (West, PREMISE through 2006 Public Laws approved and effective through March 15, 2006), and the State did not provide "any authority supportive of the imposition of prosecutor's collection fees under the circumstances of the instant case." *Creekmore v. State*, 853 N.E.2d at 532.

In its petition, the State contends "the imposition of the prosecutor's fee is ... statutorily authorized[ ] under the Indiana Home Rule Chapter of Indiana Code Title 36." *Appellee's Petition for Rehearing* at 4. Ind.Code Ann. § 36-1-3-2 (West, PREMISE through 2006 2nd Regular Sess.) states, "[t]he policy of the [S]tate is to grant units all the powers that they need for the effective operation of government as to local affairs." Based upon this statute, the State contends Kosciusko County, which is a "unit" under I.C. § 36-1-2-23, was authorized to collect a fee for processing dishonored checks pursuant to "Kosciusko County, Ind., General Ordinance No. 95-4 (Feb. 7, 1995)." *Appellee's Petition for Rehearing* at 2.

[1][2] The State did not make this argument upon appeal, nor did it cite either the Indiana Home Rule statute or the Kosciusko County ordinance. Our Supreme Court has stated that "issues in an \*232 appeal are typically fixed by the briefs tendered to the Court of Appeals. Moreover, as the leading treatise in the field correctly observes, a petition for rehearing in the Court of Appeals must rely on the same theory as that advanced in the original brief." *State v. Jones*, 835 N.E.2d 1002, 1004 (Ind.2005) (citing George T. Patton, *Indiana Practice: Appellate Procedure* § 12.1 (3d ed.2001)). The State's petition, therefore, is denied. We write separately, however, to clarify that the imposition of a fee for the collection of a dishonored check is not

impermissible. Notwithstanding our conclusion that a "prosecutor's collection fee" was not authorized pursuant to I.C. § 33-37-4-1, such a fee may be imposed where it is otherwise authorized by, e.g., the Indiana Home Rule statute and a valid county ordinance.

MATHIAS, J., and BARNES, J., concur.

Ind.App.,2006.  
*Creekmore v. State*  
858 N.E.2d 230

END OF DOCUMENT

**Westlaw Delivery Summary Report for LONG,SAMUEL ADAM**

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STATE OF INDIANA  
**OFFICE OF THE ATTORNEY GENERAL**

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**STEVE CARTER**  
INDIANA ATTORNEY GENERAL

TELEPHONE: 317.232.6201  
FAX: 317.232.7979

February 7, 2008

The Honorable Keith A. Meier  
Judge, Warrick Superior Court No. 1  
One County Square, Suite 300-A  
Boonville, IN 47601

RE: Request for Opinion on Proposed Ordinance Imposing \$5.00 Fee for Benefit of Alcohol and Drug Services Program

Dear Judge Meier:

This is in response to your letter dated January 2, 2008, requesting an opinion on the proposed county ordinance imposing a five dollar (\$5.00) fee on all misdemeanor and felony cases filed in any Warrick County court. These fees will be used to fund the court's substance abuse program.

Your letter referenced the Court of Appeals opinion in *Creekmore v. State of Indiana*, 853 N.E.2d 523 (Ind. Ct. App. 2006). It is noted that this office filed the petition for rehearing in that case which resulted in the court issuing a separate opinion clarifying its original opinion on the collection of fees. As you correctly stated in your letter, the court clarified that a fee may be imposed where it is otherwise authorized by statute (e.g., the Indiana Home Rule statute) and a valid county ordinance. *Creekmore v. State of Indiana*, 858 N.E.2d 230, 232 (Ind. Ct. App. 2006). The court's decision on the issue of fees is consistent with the position taken by this office in the petition for rehearing.

Beyond what we have noted above, this office does not typically provide opinions on matters of a purely local nature, so we decline to issue an opinion in this matter.

Very truly yours,

Susan W. Gard  
Deputy Attorney General  
Chief Counsel, Advisory Section

**FILED**

FEB 11 2008

CLERK WARRICK CIRCUIT AND SUPERIOR COURTS