

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

AUDIT REPORT

OF

COUNTY COMMISSIONERS

LAGRANGE COUNTY, INDIANA

January 1, 2010 to December 31, 2010



FILED
12/27/2012

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COUNTY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
President of the County Council	Charles F. Ashcraft	01-01-10 to 12-31-11
	John A. Price	01-01-12 to 12-31-12
President of the Board of County Commissioners	Phillip D. Curtis	01-01-10 to 12-31-10
	George R. Bachman	01-01-11 to 12-31-12



STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

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TO: THE OFFICIALS OF LAGRANGE COUNTY

We have audited the records of the County Commissioners for the period from January 1, 2010 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 Audit Results and Comments. The financial transactions of this office are reflected in the Annual Financial Report of LaGrange County for the year 2010.

STATE BOARD OF ACCOUNTS

October 11, 2012

COUNTY COMMISSIONERS
LAGRANGE COUNTY
AUDIT RESULTS AND COMMENTS

NO CONTRACT WITH COUNTY ATTORNEY

For the year 2010, payments of \$140,630.68 to Beers Mallers Backs & Salin, LLP, and \$20,000.00 to Kurt Bachman for services as the County Attorney were made without a written contract.

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

LACK OF INTERNAL CONTROLS - MINUTES OF THE COUNTY COMMISSIONERS STAFF MEETINGS

We noted the following deficiencies in the internal control system of LaGrange County related to reporting:

1. No signed minutes of the County Commissioners staff meetings were presented for audit. The only documentation presented were unsigned Memorandums for each meeting, that detailed the date, time, and place of the meeting, the members of the governing body that were present or absent, and a choice of three generic statements of the general substance of all matters proposed. Although there is no requirement that the County Commissioners sign the minutes, it is a good internal control procedure to do so. Their signatures provide verification that they approve what is written in the minutes.
2. As stated above, the memorandums included a choice of three generic statements of the general substance of all matters proposed. These choices were as follows:
 - a. To receive information or recommendations, in order to carry out administrative functions; or
 - b. To carry out administrative functions; or
 - c. To confer with staff members on matters relating to the internal management of the unit.

No other details were included on the memorandums and we were unable to determine what was actually discussed or what actions were taken, if any, resulting in a lack of audit trails.

3. The memorandums contained no indication that the County Auditor was in attendance at the staff meetings. The memorandums were not signed by the County Auditor. Although there is no requirement that the County Auditor sign the minutes, it is a good internal control procedure to do so. The County Auditor's signature represents an attestation that the minutes are true and complete.

Indiana Code 36-2-2-11(a) states in part: "The county auditor shall attend all meetings of, and record in writing the official proceedings of, the executive."

Governmental units should have internal controls in effect which provide reasonable assurance regarding the reliability of financial information and records, effectiveness and efficiency of operation, proper execution of management's objectives, and compliance with the 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.

COUNTY COMMISSIONERS
LAGRANGE COUNTY
AUDIT RESULTS AND COMMENTS
(Continued)

Controls over the receipting, disbursing, recording, and accounting for the financial activities are necessary to avoid substantial risk of invalid transactions, inaccurate records and financial statements and incorrect decision making. (Accounting and Uniform Compliance Guidelines Manuals for Counties of Indiana, Chapter 1)

WAGNER LAND DEVELOPMENT COMPANY, INC., SETTLEMENT

On December 20, 2010, the County Commissioners signed a Settlement and Mutual Release Agreement with Wagner Land Development Company, Inc., in regards to a lawsuit filed by Wagner. The lawsuit stemmed from alleged nonpayment by LaGrange County for work performed by Wagner at Fawn River Crossing. The settlement requires LaGrange County to pay Wagner the sum of \$725,000 in return for approximately 64 acres located in Fawn River Crossing. This sum is to be paid in three installments of \$5,000 on December 20, 2010, \$432,000 on February 25, 2011, and \$288,000 on February 24, 2012. The amount of the settlement is contingent upon the County receiving two appraisals of the property that are not less than the settlement amount. If the appraisals were less, the settlement agreement became null and void.

On January 18, 2011, the County Commissioners passed Resolution 2011-01-18a, A Resolution of the Board of County Commissioners of the County of LaGrange, Indiana Regarding the Purchase of Specified Land and Appointing Appraisers. Through this resolution, the County Commissioners appointed two appraisers to appraise the real estate at Fawn River Crossing. In our review of the appraisals, we noted that one of the appraisals was dated January 11, 2011, seven days prior to the Commissioners appointment of the two appraisers. The invoice for this appraisal stated that the appraisal was ordered on January 7, 2011, eleven days prior to being appointed by the Commissioners. This appraisal valued the land at the exact amount of the settlement, \$725,000. The second appraisal valued the land at \$1,050,760 and was dated February 15, 2011. We also noted that the appraisal and invoice reviewed were addressed to the LaGrange County Commissioners with a mailing address that is not the County's address, but the office address of the County Attorney.

Indiana Code 36-1-10.5-5 states in part:

"A purchasing agent shall purchase land or a structure only after compliance with the following procedures:

- (1) The fiscal body of the political subdivision shall pass a resolution to the effect that is interested in making a purchase of specified land or a structure.
- (2) The purchasing agent shall appoint two (2) appraisers to appraise the fair market value of the land or structure. The appraisers must be professionally engaged in making appraisals or be trained as an appraiser and licensed as a broker under IC 25-34-1.
- (3) The appraisers shall return their separate appraisals to the purchasing agent within thirty (30) days after the date of their appointment. The purchasing agent shall keep the appraisals on file in the purchasing agent's office for five (5) years after they are given to the purchasing agent.
- (4) The purchasing agent shall give a copy of both appraisals to the fiscal body."

COUNTY COMMISSIONERS
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(Continued)

LAMBRIGHT TRUST

Background

On January 22, 1991, Alvin Earl Lambright, Jr., and Ruth (Lucille) Arleta Lambright created a Revocable Land Trust (Trust) by transferring real property in Noble County and LaGrange County to the Trust. The Trust named Alvin Lambright, Ruth Lambright, and Kurt Bachman as Co-Trustees. Kurt Bachman is the County Attorney for LaGrange County. Ruth died on February 27, 2007. The trust agreement provided that at the death of Alvin, the Trust was to become irrevocable, and Kurt Bachman was to become the life estate beneficiary. At Kurt's death the real estate was to pass to LaGrange County. Alvin Lambright died on October 9, 2008. The Trust contained real estate of approximately 516 acres in LaGrange and Noble Counties and other personal property items. The trust agreement stated that none of the principal of the Trust may be paid to Kurt Bachman.

On March 2, 2009, the County Commissioners approved a Fee Engagement with Burt, Blee, Dixon, Sutton, and Bloom Attorneys at Law, naming Tim Claxton as County Attorney for any dealings with the Trust, since Kurt Bachman, County Attorney, is the Trustee and life estate beneficiary of the Trust.

In a meeting held July 6, 2009, Kurt Bachman filed a Uniform Conflict of Interest Disclosure Statement with the County Commissioners and stepped down as the County Attorney and Tim Claxton took over as County Attorney for dealings with the Trust. The County Commissioners approved and signed a Statement of Proposed Action and Consent to Real Estate Purchase (agreement). (This agreement was obtained from the LaGrange County Prosecutor on February 15, 2011) This Statement of Proposed Action and Consent agreement gave the Trustee (Kurt Bachman) the direction to sell all of the Noble County real estate and a portion of the LaGrange County real estate for the purpose of paying Indiana Inheritance Tax, which was paid on July 8, 2009, in the amount of \$123,303.53 (information obtained from the LaGrange County Auditor's Funds Ledger). Kurt Bachman exchanged 48 percent of his life estate interest to purchase the property. No cash changed hands. This agreement required that the County Commissioners not disclose any documents or information that would disclose the identity of Kurt Bachman. This Statement of Proposed Action and Consent agreement sold to Kurt Bachman, Trustee, the County's future interest in all of the Noble County real estate and a portion of the LaGrange County real estate. At this same meeting, Kurt Bachman disclaimed approximately 52 percent of his life estate interest in the Trust assets which reduced the inheritance taxes due. The values used for the real estate in the above transactions were from the appraisals by Caldwell Appraisals, Inc., valued as of October 9, 2008, at the time of Alvin Lambright's death. The total appraised values, as listed in the consent agreement for the Noble and LaGrange properties, were \$410,000 and \$1,355,000, respectively.

On July 7, 2009, Kurt Bachman, Trustee, conveyed 119 acres (valued at \$142,900 by County assessor for tax purposes) in LaGrange County and 125.11 acres and a house (valued at \$258,300 by County Assessor for tax purposes) in Noble County from the Trust to Northeast Indiana Farm Preservation, LLC. Northeast Indiana Farm Preservation, LLC, is a limited liability company owned by Bachman.

As of July 8, 2009, the County became the sole beneficiary of all remaining assets in the Trust. The sale resulted in Kurt Bachman relinquishing his 100 percent life interest in all remaining Trust assets.

On July 8, 2009, Kurt Bachman, as Trustee of the Trust, paid inheritance tax of \$123,303.53 (information obtained from the LaGrange County Auditor's Funds Ledger) to LaGrange County.

On May 14, 2010, Kurt Bachman, as Trustee, granted an easement to Northeast Indiana Farm Preservation, LLC, across the property in LaGrange County that belongs to LaGrange County. This easement was 50 feet wide at the shoreline.

COUNTY COMMISSIONERS
LAGRANGE COUNTY
AUDIT RESULTS AND COMMENTS
(Continued)

On August 31, 2010, LaGrange County paid a claim to Kuntry Lumber for \$160.60. This claim was for a gate, 6X6's, and concrete gravel mix for the Lambright property. The locked gate was installed at the entrance to limit access to the easement given to Northeast Indiana Farm Preservation, LLC. This was a personal expense to the LLC and not an expense to the County. A Uniform Conflict of Interest Disclosure Statement was not filed by Kurt Bachman for this benefit.

On October 4, 2010, Kurt Bachman again stepped down as County Attorney and Tim Claxton acted as County Attorney for dealing with a license agreement for the Lambright property. Claxton requested approval to transfer the license agreement with Midway Farms from the Trust to LaGrange County. There are 136.5 tillable acres to be licensed to Midway Farms. The Commissioners approved instructing the Trustee (Kurt Bachman) to issue the license as presented. They authorized the Trustee to negotiate with the farmer with respect to the price per acre and the length of the term as ten years. No quotes or bids were accepted for the rental of the County's 136.5 acres. On October 5, 2010, Kurt Bachman, Trustee, signed a ten year license agreement with Midway Farms for \$125.00 per acre. It is noted that in 2010 the rental was \$142.50 per acre.

On December 27, 2010, Kurt Bachman again stepped down as County Attorney to discuss the Lambright property. Kurt Bachman stated he was there as Trustee to sign the deed, turn over the keys, and assign the lease to the Commissioners. Kurt Bachman stated that there is a ten year lease on the farm beginning January 1, 2011, with rent of \$17,062.50 to be paid in two installments in May and November.

Documentation

On February 17, 2011, we requested that the County Auditor provide us with any documents relating to the Trust. The only documents on file in the County Auditor's office were the Assignment of License Agreement and the License Agreement and a copy of Kurt Bachman's Uniform Conflict of Interest Disclosure Statement filed on July 6, 2009.

In order to determine the nature and extent of LaGrange County's interest in the Trust, and whether the County's interest was held and disposed of in compliance with the law and Uniform Compliance Guidelines, we requested the following information from Tim Claxton, County Attorney, for the Trust issues:

1. The Trust Agreement and all amendments thereto
2. Real Estate Purchase Agreement
3. CPA calculations
4. Indiana Inheritance Tax Return for Alvin E. Lambright, Jr.
5. Trust Certification and Notice
6. Trust fiduciary income tax returns

Tim Claxton obtained the information from Kurt Bachman, Trustee of the Trust. Attorney Kevin Bruns, an attorney for Beers, Mallers, Backs, and Salin, LLP, stated in a letter that his client, Kurt Bachman, required State Board of Accounts to keep all information provided except the Trust Certificate and Notice confidential. Mr. Bruns cited various Indiana statutes as well as the Indiana Access to Public Records Act in support of Mr. Bachman's position.

The Real Estate Purchase Agreement should be maintained as a record by the County to record the details of the transactions in which it disposed of an interest in one of its assets.

COUNTY COMMISSIONERS
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AUDIT RESULTS AND COMMENTS
(Continued)

Also, a copy of the trust agreement or a record of the assets held in trust should be maintained on file in the LaGrange County Auditor's office. The County should have a record of its interest in the Trust on file in order to document and provide a record of the assets owned by the County. Without a copy of this document on file there would be no way for future county officials or the public to be aware of the County's future interest in the Trust or the property.

Every governmental unit should have a complete inventory of all fixed assets owned which reflect their acquisition value. The records of each governmental unit should reflect land owned, its location, its acquisition date and the cost (purchase price). If the land is acquired by gift, the account should reflect its appraised value at the time of acquisition. (Accounting and Uniform Compliance Guidelines Manuals for Counties of Indiana, Chapter 7)

Uniform Conflict of Interest Disclosure Statements

On July 6, 2009, Kurt Bachman filed a Uniform Conflict of Interest Disclosure Statement for the exchange of land with the Lambricht Revocable Land Trust. The Uniform Conflict of Interest Disclosure Statement form asks in Question 7 for "Description of My Financial Interest (Describe in what manner the public servant or 'dependent' expects to derive a profit or financial benefit from, or otherwise has a pecuniary interest in, the above contract(s) or purchase(s); if reasonably determinable, state the approximate dollar value of such profit or benefit)." The statement as filed answers Question 7 as "See Exhibit 'C' and Exhibit 'D'." Exhibits C and D do not state the dollar value of the land exchanged, disclose what parcels or interest were exchanged; do not indicate anything about the rental of the home for eighteen months, or the value of the easements to Oliver Lake. This Disclosure Statement is deficient and fails to respond to the specific inquiry. One of the exhibits states that the dollar amount is "not reasonably determinable"; however, dollar amounts were used to prepare the Real Estate Purchase Agreement. The Real Estate Purchase Agreement was not filed with the Uniform Conflict of Interest Disclosure Statement. The Real Estate Purchase Agreement also contained a provision granting Kurt Bachman an easement across the County's portion of the Lambricht property giving him access to Oliver Lake and the right to place a pier there. The Agreement also gave Kurt Bachman the right to live in the Lambricht Homestead from August 1, 2009 through and including December 31, 2010. No details pertaining to the Real Estate Purchase Agreement were disclosed in the Uniform Conflict of Interest Disclosure Statement. References to items reviewed by the County Commissioners were contained in Exhibit D of the conflict of interest statement. These items were appraisals of the property, Trust Certification and Notice, the proposed Inheritance Tax Return (IH-6), and the CPA Calculations used to determine the present value of Kurt Bachman's life income estate. None of these items were included as a part of the Uniform Conflict of Interest Disclosure Statement. Without the above items included, there was not a full and adequate disclosure as required by Indiana Code 35-44-1-3.

On August 31, 2010, LaGrange County paid a claim to Kuntry Lumber for \$160.60. This claim was for a gate, 6X6's, and concrete gravel mix for the Lambricht property. The locked gate was installed at the entrance to limit access to the easement given to Northeast Indiana Farm Preservation, LLC. This was a personal expense to the LLC and not an expense to the County. A Uniform Conflict of Interest Disclosure was not filed by Kurt Bachman for this benefit.

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Prior to July 1, 2011, Indiana Code 35-44-1-3 stated in part:

"(a) A public servant who knowingly or intentionally: (1) has a pecuniary interest in; or (2) derives a profit from; a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D felony.

(c) This section does not prohibit a public servant from having a pecuniary interest in or deriving a profit from a contract or purchase connected with the governmental entity served under any of the following conditions: . . . (4) If the public servant: (A) was appointed by an elected public servant . . . and (B) makes a disclosure under subsection (d)(1) through (d)(7).

(d) A disclosure required by this section must: (1) be in writing; (2) describe the contract or purchase to be made by the governmental entity; (3) describe the pecuniary interest that the public servant has in the contract or purchase; (4) be affirmed under penalty of perjury; (5) be submitted to the governmental entity and be accepted by the governmental entity in a public meeting of the governmental entity prior to final action on the contract or purchase; (6) be filed within fifteen (15) days after final action on the contract or purchase with: (A) the state board of accounts; and (B) . . . the clerk of the circuit court in the county where the governmental entity takes final action on the contract or purchase . . .

(g) A public servant has a pecuniary interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of: (1) the public servant; or (2) a dependent of the public servant who: (A) is under the direct or indirect administrative control of the public servant; or (B) receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the public servant . . .

(k) As used in this section, 'dependent' means any of the following: (1) The spouse of a public servant. (2) A child, stepchild, or adoptee (as defined in IC 31-9-2-2) of a public servant who is: (A) unemancipated; and (B) less than eighteen (18) years of age. (3) Any individual more than one-half (1/2) of whose support is provided during a year by the public servant."

County's Life Estate and Remainder Interest

According to the Notice filed with the County Auditor, LaGrange County was the remainder beneficiary of the assets in the Trust. A large portion of the assets were real estate so the County's interest was ownership of real property.

Indiana Code 30-4-2-7(c) states in part: ". . . if, under the terms of the trust, the trustee is required at some time to distribute real property from the trust estate to a beneficiary, that beneficiary's equitable interest is real property. In all other cases the beneficiary's interest is personal property." Since the County's interest is real property, the County needed to comply with Indiana Code 36-1-11-3(c) to sell or dispose of real property.

COUNTY COMMISSIONERS
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Exchange of Property Not Approved By County Council

When the LaGrange County Commissioners exchanged their interest in some of its remainder interest in the Lambright real property with Kurt Bachman, they did not obtain approval from the County Council. When a county disposes of property with an appraised value of \$50,000 or more, approval by the County Council is required.

Indiana Code 36-1-11-3(c) states in part:

"Except as provided in section 3.2 of this chapter, in addition, the fiscal body of a unit must approve:

- (1) every sale of real property having an appraised value of fifty thousand (\$50,000) or more; . . ."

The failure of the LaGrange County Commissioners to obtain the approval of the County Council for the disposal of real property as required by Indiana Code 36-1-11-3 constitutes misfeasance on the part of the County Commissioners.

Funds misappropriated, diverted or unaccounted for through malfeasance, misfeasance, or non-feasance in office of any officer or employee may be the personal obligation of the responsible officer or employee. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

Required Appraisals Not Obtained For Exchange Of Property

When LaGrange County exchanged its interest in some of the Lambright property with Kurt Bachman the County did not obtain two appraisals of the property. They used the appraisals requested by Kurt Bachman for Inheritance Tax purposes, which appraisals were for values as of October 9, 2008, which is the date of Alvin Lambright's death, and not the July 9, 2009, sale date.

Prior to July 1, 2011, Indiana Code 36-1-11-4(b) stated in part:

"(b) The disposing agent shall first have the property appraised by two (2) appraisers. The appraisers must be:

- (1) professionally engaged in making appraisals;
- (2) licensed under IC 25-34.1: or
- (3) employees of the political subdivision familiar with the value of the property.

The appraisers shall make a joint appraisal of the property."

(c) After the property is appraised, the disposing agent shall publish a notice in accordance with IC 5-3-1 setting forth the terms and conditions of the sale and, when subsection (e) is employed, may engage an auctioneer licensed under IC 25-6.1 to advertise the sale and to conduct a public auction. The advertising conducted by the auctioneer is in addition to any other required by law and shall include a detailed description of the property to be sold stating the key numbers, if any, of the tracts within that property. If the disposing agent determines that the best sale of the

COUNTY COMMISSIONERS
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property can be made by letting the bidders determine certain conditions of the sale (such as required zoning or soil or drainage conditions) as a prerequisite to purchasing the property, the disposing agent may permit the bidders to specify those conditions. The notice must state the following:

- (1) Bids will be received beginning on a specific date.
 - (2) The sale will continue from day to day for a period determined by the disposing agent of not more than sixty (60) days.
 - (3) The property may not be sold to a person who is ineligible under section 16 of this chapter.
 - (4) A bid submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each:
 - (A) beneficiary of the trust; and
 - (B) settler empowered to revoke or modify the trust.
- (d) A bid must be open to public inspection. A bidder may raise the bidder's bid, and subject to subsection (e), that raise takes effect after the board has given written notice of that raise to the other bidders.
- (e) The disposing agent may also engage an auctioneer licensed under IC 25-6.1 to conduct a sale by public auction. The auction may be conducted either at the time for beginning the sale in accordance with the public notice or after the beginning of the sale. The disposing agent shall give each bidder who has submitted a bid written notice of the time and place of the auction.
- (f) The disposing agent may, before expiration of the time set out in the notice, sell the property to the highest and best bidder. The highest and best bidder must have complied with any requirement under subsection (c)(4). However, the disposing agent may sell the property for less than ninety percent (90%) of the appraised value of the tracts only after having an additional notice of the sale published in accordance with subsection (c). The disposing agent may reject all bids.
- (g) If the disposing agent determines that, in the exercise of good business judgment, the disposing agent should hire a broker or auctioneer to sell the property, the disposing agent may do so and pay the broker or auctioneer a reasonable compensation out of the gross proceeds of the sale. However, the disposing agent must still comply with the procedural requirements of this section. The disposing agent may hire one (1) of the appraisers as the broker or auctioneer."

The failure of the LaGrange County Commissioners to obtain two appraisals of the real estate exchanged in the transaction with the Lambright Trust as required by Indiana Code 36-1-11-4 constitutes misfeasance on the part of the County Commissioners.

Funds misappropriated, diverted or unaccounted for through malfeasance, misfeasance, or non-feasance in office of any officer or employee may be the personal obligation of the responsible officer or employee. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

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Easement Across County's Portion Of Lambright Property

On July 6, 2009, the Lambright Revocable Land Trust pursuant to the previously mentioned Real Estate Purchase Agreement, agreed to grant an easement to Northeast Indiana Farm Preservation, LLC, (a limited liability corporation owned by Kurt Bachman). This was a part of the Real Estate Purchase Agreement with Kurt Bachman. This transaction was approved by the County Commissioners on July 6, 2009, as remainder beneficiary of the Trust. The Grant of Easement was actually recorded as document number 10050248 on May 18, 2010, in the LaGrange County Recorder's office. The Grant of Easement on file in the County Recorder's Office was signed by Kurt Bachman, as Trustee of the Lambright Revocable Land Trust Agreement, on May 14, 2010. This Grant of Easement is different from the Grant of Easement presented to the County Commissioners on July 6, 2009, in the Real Estate Purchase Agreement. It contains an additional paragraph giving the grantee "the right to store upon the Easement the pier and any associated components thereof, including storage of any boat, watercraft, pontoon or flotation platform when not in use. Grantee shall also have the right to place a small storage or lock box structure upon the Easement for purpose of securing any and all items of personal property typically associated with the use and enjoyment of access to a lake such as the access granted herein." The Grant of Easement signed on May 14, 2010, is also missing a paragraph from the original agreed upon Grant of Easement as follows: "Grantor acknowledges that the consideration received for the conveyance made herein does not include any express or implied release or waiver by the Grantee of rights to subject Grantor and its property to lawful charges, including special assessments, as may be authorized by law." There is no record in the County Commissioners' minutes of them approving the Grant of Easement dated May 14, 2010, that is on file in the County Recorder's office.

Lambright Farm License Agreement

The Lambright property that was deeded to LaGrange County on December 27, 2010, contains approximately 136.5 tillable acres. On October 4, 2010, the County Commissioners authorized the Trustee of the Revocable Lambright Trust (Kurt Bachman) to negotiate with the farmer the price per acre for rent of the 136.5 tillable acres for a term of ten years. On October 5, 2010, the Trustee (Kurt Bachman) entered into a "License Agreement" with Midway Farms for an annual license fee of \$17,062.50 or \$125.00 per acre for a period of ten years. It was noted that in 2010 the rental was \$142.50 per acre. This "License Agreement" was assigned to the County Commissioners on December 27, 2010. Paragraph 19, Agreement to Use, of the License Agreement states in part: "Under no circumstances shall this Agreement be construed to constitute a lease of any kind or any term." It appears that the license agreement is in fact a lease. The "License Agreement" is referred to as a lease in the October 4, 2010 County Commissioner Minutes. By not following the provisions of Indiana Code 36-1-11-10, the County Commissioners were able to enter into this agreement without holding a public hearing, determining the fair market rental value, receiving competitive bids, and approval of the County Council. The County Commissioners should have followed the leasing provision of Indiana Code 36-1-11-10 as the transaction is a lease of a real property interest of the County.

Prior to July 1, 2011, Indiana Code 36-1-11-10 stated:

"(a) A disposing agent may lease property rather than sell, transfer, or exchange it under this chapter only if the disposing agent determines that a lease rather than a sale, transfer, or exchange would be in the best interest of the disposing agent's political subdivision or agency and the public. Except as provided in section 12 of this chapter, the disposing agent must proceed under this section in leasing the property.

(b) The disposing agent shall first have the property appraised in the manner prescribed in section 4(b) of this chapter except that the appraisers shall determine the market rental value of the property.

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(c) The disposing agent shall receive bids in the manner prescribed in section 4 of this chapter and lease the property to the highest and best bidder. However, the disposing agent may lease the property for less than ninety percent (90%) of the appraised fair market rental value only after having an additional notice of the lease published in accordance with section 4(c) of this chapter.

(d) The disposing agent shall determine the terms and conditions of any lease under this section, which may include options to renew and options to purchase. The property may not be leased to a person who is ineligible under section 16 of this chapter.

(e) The terms of a lease with option to purchase may provide that all or part of the rental payments under the lease apply to the purchase price. The purchase price must be equal to at least the minimum sale price determined under section 4(f) of this chapter.

(f) Property owned by a political subdivision or agency may be leased for a term longer than three (3) years if the lease is approved by the fiscal body of the political subdivision."

The failure of the LaGrange County Commissioners to comply with Indiana Code 36-1-11-10 and Indiana Code 36-1-11-13 with regard to leasing of real property owned by the County constitutes misfeasance on the part of the County Commissioners.

Funds misappropriated, diverted or unaccounted for through malfeasance, misfeasance, or non-feasance in office of any officer or employee may be the personal obligation of the responsible officer or employee. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

Term of License Agreement

The "License Agreement" that the Trustee, Kurt Bachman, entered into with Midway Farms on October 5, 2010, had an effective date of January 1, 2011. The term begins after the property was conveyed from the Trust to LaGrange County, which occurred on December 27, 2010. The Trustee should not have entered into an agreement that did not become effective until after the property was conveyed from the Trust.

The term of the "License Agreement" was for a period of ten years, January 1, 2011 through December 31, 2021, at a rate of \$125.00 per acre. Based on the August 2010 Purdue Agricultural Economics Report, June 2010, average cash rent per acre for Northeast Indiana were \$115 for poor land, \$150 for average land, and \$192 for top land. These rents per acre increased 3.6 percent for poor land, 2.0 percent for average land, and no increase for top land from June 2009 to June 2010, based on the Purdue study. The prior "License Agreement" between the Trust and Midway Farms, Inc., was for a two year period, January 1, 2009 through December 31, 2010, at a rate of \$125.00 per acre for the first year and \$142.50 per acre for the second year.

Indiana Code 36-1-11-13 states: "Notwithstanding any other law, a disposing agent for a county may not lease county-owned property at a rate that deviates more than five percent (5%) from the average square footage rate charged for similar property in that county." The interest of the County in this Trust real estate is real property per Indiana Code 30-4-2-7(c).

COUNTY COMMISSIONERS
LAGRANGE COUNTY
AUDIT RESULTS AND COMMENTS
(Continued)

Principal Distributed to Trustee

On July 6, 2009, the Lambright Trust sold approximately 256 acres to the Trustee, Kurt Bachman. The Trust Certificate and Notice item 5 (obtained from the LaGrange County Recorder's Office Document number 09010072) states in part: "Bachman has been granted a lifetime interest in the use, possession and net income of the real estate. No principal may be distributed to him . . ."

Indiana Code 30-4-3-7 states in part:

"(a) Unless the terms of the trust provide otherwise or the transaction is authorized under IC 28-1-12-8 or IC 28-6.1-6-26, the trustee has a duty:

(2) not to purchase or participate in the purchase of trust property from the trust for the trustee's own or an affiliate's account . . ."

Annual Report of Trust Transactions

No annual accounting of the receipts and disbursement of the Trust were presented to the County Commissioners by the Trustee for the years 2008, 2009, and 2010.

Indiana Code 30-4-5-12 states in part:

"(a) Unless the terms of the trust provide otherwise or unless waived in writing by an adult, competent beneficiary, the trustee shall deliver a written statement of accounts to each income beneficiary or his personal representative annually. The statement shall contain at least: (1) all receipts and disbursements since the last statement; (2) and all items of trust property held by the trustee on the date of the statement at their inventory value."

PERSONAL EXPENSES

On August 31, 2010, the County paid \$160.60 to Kuntry Lumber for a gate, posts, and concrete gravel mix. These items were used to install a gate at the entry to Kurt Bachman's easement on the Lambright property. These expenses should not have been paid from County funds since the easement was not County property at the time. This property was not deeded to the County until December 27, 2010. No Uniform Conflict of Interest Disclosure Statement was filed by Kurt Bachman for this benefit.

Public funds may not be used for personal items or for the expenses which do not relate to the functions and purposes of the governmental unit. Any personal expenses paid by the governmental entity may be the personal obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

COUNTY COMMISSIONERS
LAGRANGE COUNTY
EXIT CONFERENCE

The contents of this report were discussed on October 11, 2012, with George R. Bachman, President of the Board of County Commissioners; John A. Price, President of County Council; and Kay M. Myers, Auditor.