

B41615

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

AUDIT REPORT
OF

TOWN COURT
TOWN OF MERRILLVILLE
LAKE COUNTY, INDIANA

January 1, 2011 to December 31, 2011



FILED
01/08/2013

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TOWN OFFICIALS

| <u>Office</u> | <u>Official</u> | <u>Term</u> |
|----------------------------------|--|--|
| Judge | Gina L. Jones | 01-01-11 to 12-31-15 |
| Court Administrator | Daniel T. Bozich (Vacant) Mattie Collins | 01-01-11 to 04-20-11 04-21-11 to 04-24-11 04-25-11 to 12-31-12 |
| Clerk-Treasurer | Eugene M. Guernsey | 01-01-08 to 12-31-15 |
| President of the Town Council | Thomas Goralczyk Shawn M. Pettit | 01-01-11 to 12-31-11 01-01-12 to 12-31-12 |



STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

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TO: THE OFFICIALS OF THE TOWN OF MERRILLVILLE

We have audited the records of the Town Court 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 Results and Comments. The financial transactions of this office are reflected in the Annual Report of the Town of Merrillville for the year 2011.

STATE BOARD OF ACCOUNTS

September 20, 2012

TOWN COURT
TOWN OF MERRILLVILLE
AUDIT RESULTS AND COMMENTS

CONDITION OF RECORDS

City and Town Courts are required to maintain, in accordance with Accounting and Uniform Compliance Guidelines Manual for City and Town Courts, a City/Town Cash Book Form 213CT (Cash Book) and a Register of Trust Funds, General Form 102 (Trust Register). For a majority of the Courts' entries to the Court View software system, these prescribed forms have been replaced with electronically generated ledger equivalents. The prior Court Administrator opted to maintain the prescribed City/Town Cash Book and Trust Register manually and forgo updating the electronic ledger equivalents in Court View. For the most part, the receipt activity of the electronic ledgers should be accurate because receipts were generated through the electronic software that generates the electronic ledger. However, the electronic disbursement activity was not posted to the electronic cash book because all checks are handwritten, and are not processed electronically through the computer system. Disbursements were manually posted on individual defendant's electronic case files. The Court View software has the capability of electronically issuing checks and posting disbursements to the electronic cash book and trust register. However, officials did not use this feature of the software.

The Court View Software is capable of applying trust funds (cash bonds) to pay court costs, by using a "bond applied" function. This process removes the bond amount from the trust register and applies the costs to the appropriate fee categories in the cash book. A receipt is generated noting the bond was applied. Because disbursements were prepared manually and not processed electronically through the Court View system, the electronic equivalent of the Cash Book and the Trust Register could not be used to determine the respective cash balance in the ledger. A complete and functional electronic cash book and trust ledger was not available for audit. Using electronic software to generate (and post) checks would reduce the potential for errors or the misapplication of costs and more efficiently use Court resources.

From March 1, 2011 to August 31, 2012, the officials did not maintain the manual "Cash Book", the official record of the Town Court. Officials did not (and could not) reconcile the bank accounts to the Cash Book, as the Cash Book's balances were unknown. Outstanding check lists, and outstanding deposits in transit, including credit card activity, were not prepared at the end of each month. The Trust Register was also not reconciled to the corresponding balance in the Cash Book.

During the prior examination of records, the Cash Book was reconciled to the bank and investment accounts as of February 28, 2011. Court officials were given the appropriate cash book balances as of February 28, 2011. A new court employee was not knowledgeable in the procedure of recording court transactions in the Cash Book and preparing the corresponding bank reconciliation. This employee was primarily the only person responsible for the financial activity of the Town Court. Segregation of duties, a key component of adequate internal controls, was not in place in the Court's recordkeeping process. Also, the failure of personnel not to perform assigned duties for an extended length of time indicates a lack of management oversight.

Each city and town court is required to use official records and forms that are designated by the legislature or prescribed or approved by the State Board of Accounts or the State Court Administration office of the Supreme Court. (Accounting and Uniform Compliance Guidelines Manual for City and Town Courts, Chapter 1)

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.

TOWN COURT
TOWN OF MERRILLVILLE
AUDIT RESULTS AND COMMENTS
(Continued)

At all times, the manual and computerized records, subsidiary ledgers, control ledger, and reconciled bank balance should agree. If the reconciled bank balance is less than the subsidiary or control ledgers, then the responsible official or employee may be held personally responsible for the amount needed to balance the fund. (Accounting and Uniform Compliance Guidelines Manual for City and Town Courts, Chapter 4)

CASH BOND TRUST LEDGER

The Town Court collects cash bonds when defendants are required to post a bond in order to be released from jail. The bond is held in trust, a receipt is issued, and the bond is to be recorded in "Court View" (computerized court software) and recorded in the manual "Register of Trust Funds", General Form 102. When the case is disposed of, the bond is released back to the defendant, or it may be used to pay court costs, fines, and/or attorney fees as ordered by the court. At December 31, 2011, the manual "Register of Trust Funds" did not reconcile to the court's cash balance of monies held in trust. In testing receipts for cash bonds collected in June 2011, 14 out of 41, or 34 percent were not recorded to the manual "Register of Trust Funds".

At all times, the manual and computerized records, subsidiary ledgers, control ledger, and reconciled bank balance should agree. If the reconciled bank balance is less than the subsidiary or control ledgers, then the responsible official or employee may be held personally responsible for the amount needed to balance the fund. (Accounting and Uniform Compliance Guidelines Manual for City and Town Courts, Chapter 4)

CASH BONDS NOT DEPOSITED

In the prior report of the Town Court, Report B39376, it was reported that cash bonds not deposited for the period July 28, 2006 to July 27, 2011, totaled \$310,325. This amount was determined by tracing cash bond collections at the Police Department to the records of the Town Court for subsequent deposit. A former Court employee was responsible for collecting the cash bonds from the Police Department and subsequently recording the cash bond to the Court's computer system.

The same former employee also received cash bond payments that were made at the Court's administrative office. From July 13, 2011 to August 31, 2012, the Town Court has redeemed and/or applied cash bonds to a defendant's court costs, if that individual could provide an official receipt as proof of payment of their cash bond, and the Court had other supporting Court documents such as jail release forms and notations in the case file. During this period additional cash bonds not deposited were determined to be \$15,560. These bonds were not on the original list of bonds not deposited as collected at the Police Department. These additional cash bonds not deposited, but redeemed in this audit period, can be attributed to court cases during the time period of the former Court employee's employment. Therefore, the total cash bonds not deposited has increased to \$325,885 (\$310,325 plus \$15,560).

Officials have also identified 22 other cases, totaling \$20,150, where the court order indicates a bond was required in order to be released from jail, but a cash bond was not posted to the computer system. Officials are waiting for the defendants to provide a receipt to prove payment was made. The final amount of cash bonds not deposited can't be finalized until all of the Town's court cases from July 28, 2006 to July 27, 2011, have been finalized and redeemed.

The Town Court is redeeming (and/or applying to court costs) the cash bonds not deposited by using current collections and other cash bonds held in trust. The Court has filed the appropriate insurance claims in order to recoup the funds not deposited. As of August 31, 2012, insurance proceeds have not been received.

TOWN COURT
TOWN OF MERRILLVILLE
AUDIT RESULTS AND COMMENTS
(Continued)

Due to the substantial amount of the cash bonds not deposited, the Court (Town) will need to seek additional funding sources in the future, in order to replenish the cash necessary to redeem all of the defendant's cash bonds that were not deposited.

Indiana Code 5-13-6-1(d) states:

"A city (other than a consolidated city) or a town shall deposit funds not later than the next business day following the receipt of the funds in depositories:

- (1) selected by the city or town as provided in an ordinance adopted by the city or the town;
and
- (2) approved as depositories of state funds."

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 Cities and Towns, Chapter 7)

PUBLIC DEFENDER FEE

On March 28, 2000, Town Ordinance Number 00-10 established a Court Public Defender Fund to account for "Court Public Defender Funds and Expenditures." There was no fee schedule establishing the fee or designating that any remaining cash bond proceeds, after payment of court costs and other fees, be paid to the Court Public Defender Fund. At December 31, 2011, the Court Public Defender Fund cash balance was \$13,702. There is no statutory authority for the Town Court of Merrillville to have a supplemental public defender services fund. Indiana Code 33-40-3-10(a), which applies to Lake County, allows cities to set up such a fund, but towns are not mentioned in this section. Indiana Code 33-40-3-5 provides that the county can set up one such program of " . . . providing court appointed legal services in the county . . . " which would include the Town of Merrillville. The county is required to provide public defender service to the Town because the legislature has provided this as the only option in Lake County. [Indiana Code 33-40-7-5(a)(4)]

The funds currently held by the Town to pay public defenders should be remitted to the county. [Indiana Code 35-33-8-3.2(b)]

Indiana Code 33-40-3-10(a) states in part:

"In a county with a population of more than four hundred thousand (400,000) and less than seven hundred thousand (700,000) in which a county public defender service is not provided, a supplemental public defender services fund must be established in each city for providing funding for a public defender to represent indigent defendants in a city court."

Indiana Code 33-40-3-5 states in part: "A county may not have more than one (1) program providing court appointed legal services in the county, unless the fiscal body of the county agrees to allow additional court appointed legal services programs in the county."

Indiana Code 33-40-7-5(a)(4) states in part: "The board shall prepare a comprehensive plan that must include at least one (1) of the following methods of providing legal defense services to indigent persons: . . . (4) In a county described in section 1(3) of this chapter, establishing a public defender's office for the criminal division of the superior court."

TOWN COURT
TOWN OF MERRILLVILLE
AUDIT RESULTS AND COMMENTS
(Continued)

Indiana Code 35-33-8-3.2(b) states in part: "Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining under subsection (a)(2) to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-40-3."

INTEREST ON CERTIFICATE OF DEPOSIT

The Town Court has a \$150,000 Certificate of Deposit (CD) that earns interest. Interest earned has been added to the principal amount of the CD each time it has matured. Interest was not remitted to and deposited into the Court's depository account and forwarded to the Town, through the Report of Collections. The value of the CD at September 16, 2012, is \$152,221.96. Upon maturity on September 16, 2012, all interest should be deposited into the checking account and remitted to the Town.

The State's portion of court costs, along with the State fees which are sent directly to the Auditor of State, may be invested by the Court Clerk while awaiting transmittal to the State. Such investments would be limited to those permitted under IC 5-13-9.

The interest earned should be receipted to the city or town general fund. Since the city or town court budget is a department within the general fund budget, it is possible that (with common council or town council approval) the interest income generated could be taken into consideration when reviewing the court's requirements during the annual budget process. (Accounting and Uniform Compliance Guidelines Manual for City and Town Courts, Chapter 4)

TOWN COURT
TOWN OF MERRILLVILLE
EXIT CONFERENCE

The contents of this report were discussed on September 20, 2012, with Gina L. Jones, Judge, and Mattie Collins, Court Administrator. The Official Response has been made a part of this report and may be found on pages 9 through 11.

October 1, 2012

via email: tmoody@sboa.in.gov

State Board of Accounts
Attn: Bruce Hartman, State Examiner
302 West Washington Street, Rm E 418
Indianapolis, IN 46204-2765

RE: OFFICIAL RESPONSE

Dear Sir;

As presiding Judge of the Merrillville Town Court, this letter shall serve as my OFFICIAL RESPONSE to the Audit Results and Comments discussed on September 20, 2012.

The Audit of August 2011 by the State Board of Accounts was a forensic audit necessary due to the discovery of errors in financial transactions and allocations. These errors were not discovered for a number of years as evidenced by the Town Court never failing an audit. Subsequent to the discovery, the State Board of Accounts worked with the Court Staff in efforts to be in compliance with the Accounting and Uniform Compliance Guidelines for City and Towns Courts.

Condition of Records

As indicated in the audit results and comments, and as discussed with the State Board of Accounts, we chose to depart from manual entry of all transaction and began to enter them into (Court View) the electronic ledger equivalent to the Cash Book and Trust Register. In addition to the Court Staff entering all financial transactions into Court view, the Current Court Administrator duplicated the transactions, manually onto the prescribed City/Town Cash Book and Trust Register. The Court Administrator further used manual check writing. Although the

checks were handwritten, the transaction was also recorded in Court view in the notes section tied to the specific case. We have been informed that is not the correct format. Placing the information in the incorrect location prohibited the manual Cash Book and Trust Register from matching the electronic equivalent to both. Additionally, the Trust Register was not reconciled to the corresponding balance in the Cash Book (electronic nor manual). Similar to the previous situation, a notation was made on the case and not in the proper location.

As suggested, the Court personnel shall participate in more in-depth training in Court view. This training will reduce the potential for errors or the misapplication of costs and more efficiently use Court resources. The audit indicated an additional segregation of duties is necessary and we have no problem complying with this request.

Cash Bond Trust Ledger

The Court Administrator diligently ensured that the staff correctly entered all financial transactions into court view. In updating the manual register however, there was an occasion or two where the transaction appeared in Court view and not in the manual register. That oversight has been corrected.

Cash Bonds Not Deposited

The audit report is correct in substance however, it is important to note that the original audit of August 2011 was hampered and not complete due the inability to confirm amounts of funds missing. The tracing of cash bond collections of the Police Department to the records of the town Court for subsequent deposit could only be done for as many documents able to be located. The dates 7/28/06 - 7/27/11 is indicative of insurance coverage dates, not just cash bonds not deposited. As indicated, there have been additional funds discovered that were previously unknown at the time of the August 2011 audit. Lastly, the current process of the redemption of cash bonds not deposited has been authorized by the State Board of Accounts. As indicated, the Town has filed an insurance claim and is in litigation to that end.

Town Court Public Defender Fee

The court will further review the findings of the auditor and will make adjustments as necessary.

Interest on Certificate of Deposit

The court will further review the findings of the auditor and will make adjustments as necessary.

I appreciate the time and effort by your staff during the audit.

Sincerely,

Judge Gina L. Jones
Merrillville Town Court

Cc: jaelder@sboafe.in.gov