

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

AUDIT REPORT
OF

MAYOR
CITY OF NEW ALBANY
FLOYD COUNTY, INDIANA

January 1, 2011 to December 31, 2011



FILED
03/07/2013

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CITY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Mayor	Douglas B. England Jeff Gahan	01-01-08 to 12-31-11 01-01-12 to 12-31-15
Controller	Kathlyn M. Garry Mary Ann Prestigiacomo	01-01-11 to 12-31-11 01-01-12 to 12-31-12
President of the Board of Public Works and Safety	Matthew B. Dennison Sue Ellen Wilkerson	01-01-11 to 12-31-11 01-01-12 to 12-31-12
President of the Common Council	Jeff Gahan Diane Benedetti	01-01-11 to 12-31-11 01-01-12 to 12-31-12



STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF ACCOUNTS
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TO: THE OFFICIALS OF THE CITY OF NEW ALBANY, INDIANA

We have audited the records of the Mayor 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 City of New Albany for the year 2011.

STATE BOARD OF ACCOUNTS

July 13, 2012

MAYOR
CITY OF NEW ALBANY
AUDIT RESULTS AND COMMENTS

PERSONAL EXPENSES – PAYMENTS FOR RETIREES HEALTH INSURANCE

On July 28, 2011, former Mayor Douglas B. England signed Executive Order 2011-01, Health Insurance. The Executive Order provides health insurance benefits upon retirement to non-unionized employees meeting certain longevity requirements.

Executive Order 2011-01 states in part:

"By the authority vested in me as Mayor of the City of New Albany and acknowledging the service that certain individuals have provided to the City of New Albany, I direct as follows:

1. Any individual that has worked for the City of New Albany for a minimum of ten (10) years as documented in the Indiana PERF plan shall be entitled to participate in the City's health insurance program as stated in this Executive order.
 - a. The minimum ten (10) years of service as documented by PERF must be solely with the City of New Albany and not a combination from other PERF qualified governmental agencies.
2. Any individual that meets the longevity requirement as outlined above shall be entitled to the benefits of Retirees with respect to Health Insurance as defined and explained in the Police Contract Article 15, Section D, with the City (which may be amended from time to time).
3. This executive Order shall become effective immediately upon signing by the Chief Executive Officer of the City of New Albany."

Prior to January 1, 2012, there were no former employees/retirees who received benefits under the above executive order. In 2011, the following non-union employees signed up to receive health insurance benefits following their retirement/departure from City employment on December 31, 2011:

Douglas B. England, former Mayor
Patricia Linck, former Public Safety Clerk
Kathlyn M. Garry, former Controller/Treasurer, Sewer Board

The City ceased providing these benefits following the end of the February 2012 coverage period. The following schedule details the cost incurred by the City for these benefits during the period January 1, 2012 to February 29, 2012:

MAYOR
CITY OF NEW ALBANY
AUDIT RESULTS AND COMMENTS
(Continued)

Former Employee Name/Persons Covered	Coverage Month		Totals	Date Paid	Check Number
	January	February			
<u>Douglas B. England, former Mayor</u>					
Douglas B. England	\$ 330	\$ 330	\$ 660	02-02-12	29688
Michelle England	330	330	660	02-02-12	29688
Total Douglas B. England, former Mayor	660	660	1,320		
<u>Patricia Linck, former Public Safety Clerk</u>					
Patricia Linck	330	330	660	02-02-12	29688
William Linck	330	330	660	02-02-12	29688
Total Patricia Linck, former Receptionist	660	660	1,320		
<u>Kathlyn M. Garry, former Controller/Treasurer, Sewer Board</u>					
Kathlyn M. Garry	330	330	660	02-02-12	29688
Total All Benefits Paid	\$ 1,650	\$ 1,650	\$ 3,300		

Former Mayor, Douglas B. England did not have the authority to authorize the benefits covered in the Executive order. The costs of these benefits provided are considered personal expenses. Therefore, we are requesting reimbursement jointly and severally from former Mayor Douglas B. England and from each former employee who received these benefits. We have requested reimbursement in the amount of \$3,300.00. (See Summary of Charges, page 12)

Indiana Code 5-10-8-2.6 states in part: "(b) A public employer may provide programs of group insurance for its employees and retired employees . . ."

Indiana Code 5-10-8-1 states in part:

"Sec 1. The following definitions apply in this chapter: . . . (6) "Public employer" means the state or a local unit, including any board, commission, department, division, authority, institution, establishment, facility, or governmental unit under the supervision of either, having a payroll in relation to persons it immediately employs, even if it is not a separate taxing unit. . . ."

The City of New Albany Employee Manual, approved by the Board of Public Works and Safety, does not provide for health insurance benefits to non-union employees upon retirement. Additionally, the Common Council has not adopted any salary ordinances, resolutions, or salary schedules which authorize health insurance benefits to be provided to non-union employees upon retirement.

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 Cities and Towns, Chapter 7)

MAYOR
CITY OF NEW ALBANY
AUDIT RESULTS AND COMMENTS
(Continued)

Public funds may not be used to pay for personal items or for 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 Cities and Towns, Chapter 7)

PERSONAL EXPENSES - INSURANCE PAYMENTS FOR TERMINATED FIREFIGHTER

Compensation and benefits provided to the City's Firefighters are covered in the labor contract between the City and the New Albany Professional Firefighters Union, Local 410, IADD, AFL-CIO. The labor contract does not provide provisions for the City to continue to provide and pay for benefits for terminated firefighters. On August 23, 2011, Nicholas W. Shavers was terminated by the City from his position as a Firefighter; however, we noted that the City continued to provide insurance benefits for three months following Mr. Shavers' termination. Records reviewed for audit indicated that former Mayor, Douglas B. England, authorized the continuation of insurance benefits for Mr. Shavers for the additional three months and that Mr. Shavers' employee share of premiums for those three months was withheld from his final paycheck that was issued on September 9, 2011.

The following schedule details the insurance benefits provided and premiums paid on behalf of Mr. Shavers for the three months following his termination.

Coverage Period	Insurance Type/Premium Amount			
	Health	Dental	Life	Totals
September 1, 2011 to September 30, 2011	\$ 1,789.09	\$ 94.45	\$ 15.50	\$ 1,899.04
October 1, 2011 to October 31, 2011	1,789.09	94.45	15.50	1,899.04
November 1, 2011 to November 30, 2011	<u>1,789.09</u>	<u>94.45</u>	<u>15.50</u>	<u>1,899.04</u>
Total Premiums Paid by City for Nicholas W. Shavers	5,367.27	283.35	46.50	5,697.12
Less:				
Amounts Withheld From Final Pay to Nicholas W. Shavers	<u>357.82</u>	<u>138.90</u>	-	<u>496.72</u>
Net Cost of Insurance Benefits Paid by City for Nicholas W. Shavers	<u>\$5,009.45</u>	<u>\$ 144.45</u>	<u>\$ 46.50</u>	<u>\$ 5,200.40</u>

Former Mayor, Douglas B. England, did not have the authority to authorize the continuation and payment of insurance benefits for the three months following the termination of Mr. Shavers. Payments made by the City for these benefits are considered personal expenses. We consider Douglas B. England, former Mayor, and Nicholas W. Shavers, former Firefighter, to be jointly and severally responsible for costs incurred by the City for these personal expenses. We have requested reimbursement in the amount of \$5,200.40. (See Summary of Charges, page 12)

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 Cities and Towns, Chapter 7)

Public funds may not be used to pay for personal items or for 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 Cities and Towns, Chapter 7)

MAYOR
CITY OF NEW ALBANY
AUDIT RESULTS AND COMMENTS
(Continued)

EXECUTIVE ORDERS FOR VACATION LEAVE

Indiana Code provides the legislative body of a city with the authority to grant employees vacation with pay, sick leave, paid holidays, and other similar benefits by ordinance. On November 5, 1985, the Common Council adopted Ordinance G-185-108 which set forth certain personnel policies for the employees of the City, including paid vacation and other paid leave time policies. Additionally, the ordinance stated "The personnel policies may be established from time to time through executive order by the Mayor's Office for all employees, except as otherwise stated in this ordinance or under a collective bargaining agreement." Although Ordinance G-185-108 appears to still be in effect and is included in the current City Code, the Common Council also adopts fringe benefits, including vacation leave, as part of the Ordinance Setting Salaries for Non-Bargaining Unit Employees each year.

Former Mayor, Douglas B. England, enacted Executive Orders on March 12, 2008, and February 6, 2009, both retroactive to January 1, 2008. These Executive Orders allowed seven former employees that had been rehired, to get credit for their previous years of service so that they would be entitled to more vacation time. Vacation time for nonunion employees as outlined in Ordinance G-85-108 and the annual Salary Ordinances provide that employees are to receive paid vacation ranging from two weeks to four weeks based on the years of employment. The Ordinances do not provide provisions that allow for an individual that leaves employment with the City and then comes back to get credit for previous years of service regarding leave benefits.

The vacation leave policy as adopted in Ordinance G-185-108 differs from the vacation leave policy included in the annual Salary Ordinances and the City of New Albany Employee Manual that was approved by the Board of Public Works and Safety on January 28, 1997. The annual Salary Ordinances and the Employee Manual grant the same two to four week of vacation, but employees earn those weeks at earlier years of service. The annual Salary Ordinances and the Employee Manual are what the City is currently following to provide its employees with vacation leave. Per the annual Salary Ordinances and the Employee Manual, annual leave cannot be taken until an employee has been employed with the City for at least six months consecutively. At the end of six months, the employee is entitled to five days.

Former Mayor, Douglas B. England, did not have the authority to authorize credit for prior years of service to the seven selected employees in order to provide them more vacation time than that allowed by the annual Salary Ordinances and the Employee Manual.

Indiana Code 5-10-6-1 states in part: . . .

"(b) Employees of the political subdivisions of the state may be granted a vacation with pay, sick leave, paid holidays, and other similar benefits by ordinance of the legislative body of a county, city, town, township, or controlling board of a municipally owned utility, board of directors or regents of a cemetery, or board of trustees of any library district. . . ."

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 Cities and Towns, Chapter 7)

MAYOR
CITY OF NEW ALBANY
AUDIT RESULTS AND COMMENTS
(Continued)

INSURANCE COVERAGE/OFFICIAL BOND

Employees of the City have insurance coverage under the City's crime policy. The following is a schedule of insurance coverage for the period of January 1, 2008 to December 31, 2011:

<u>Surety</u>	<u>Policy Number</u>	<u>Period Coverage</u>	<u>Amount of Coverage</u>
HCC Insurance Company	PKG90110238	June 11, 2007 to June 11, 2008	\$ 100,000
U.S. Specialty Insurance Company	PKG80210125	June 11, 2008 to June 11, 2009	100,000
U.S. Specialty Insurance Company	PKG80310125	June 11, 2009 to June 11, 2010	100,000
U.S. Specialty Insurance Company	PKG80410125	June 11, 2010 to June 11, 2011	100,000
U.S. Specialty Insurance Company	PKG80510125	June 11, 2011 to June 11, 2012	100,000

Kathlyn M. Garry, former Controller/Treasurer, Sewer Board was covered under the following Official Bonds:

<u>Name</u>	<u>Title</u>	<u>Bond Company</u>	<u>Term</u>	<u>Coverage</u>	<u>Bond Number</u>
Kathlyn M. Garry	Controller	Ohio Casualty Insurance Company	December 31, 2007 to December 31, 2008	\$ 300,000	3-803-899
Kathlyn M. Garry	Treasurer, Sewer Board	Ohio Casualty Insurance Company	December 31, 2007 to December 31, 2008	15,000	3-804-849
Kathlyn M. Garry	Controller	Ohio Casualty Insurance Company	December 31, 2008 to December 31, 2009	300,000	3-803-899-12
Kathlyn M. Garry	Treasurer, Sewer Board	Ohio Casualty Insurance Company	December 31, 2008 to December 31, 2009	15,000	3-803-849-12
Kathlyn M. Garry	Controller	Ohio Casualty Insurance Company	December 31, 2009 to December 31, 2010	300,000	3-803-899-12
Kathlyn M. Garry	Treasurer, Sewer Board	Ohio Casualty Insurance Company	December 31, 2009 to December 31, 2010	15,000	3-804-849-12
Kathlyn M. Garry	Controller	Ohio Casualty Insurance Company	December 31, 2010 to December 31, 2011	300,000	3-803-899-12
Kathlyn M. Garry	Treasurer, Sewer Board	Ohio Casualty Insurance Company	December 31, 2010 to December 31, 2011	15,000	3-804-849-12

MAYOR
CITY OF NEW ALBANY
EXIT CONFERENCE

The contents of this report were discussed on July 13, 2012, with Jeff Gahan, Mayor; Mary Ann Prestigiacomo, Controller; Diane Benedetti, President of the Common Council; Robert Caesar, Council member; and Shirley Baird, Council member.

The contents of this report were also discussed on July 13, 2012, with Douglas B. England, former Mayor. The Official Response has been made a part of this report and may be found on pages 10 and 11.

A portion of the contents of this report were discussed on July 26, 2012, with Nicholas W. Shavers, former Firefighter.

Certified letters were sent to Kathlyn M. Garry, former Controller/Treasurer, Sewer Board, and Patricia Linck, former Public Safety Clerk, providing them draft copies of the applicable portions of this report and an opportunity to attend an exit conference to discuss our findings. Both officials declined the opportunity to attend an exit conference.

July 20, 2012

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

Re: **OFFICAL RESPONSE**
City of New Albany – Mayor
January 1, 2011 to December 31, 2011
Audit Exit Conference – July 13, 2012

To whom it may concern:

I, Douglas B. England, former-Mayor, City of New Albany, Indiana, dispute the results of the above-referenced audit, to-wit:

PERSONAL (PERSONNEL?) EXPENSES – PAYMENT FOR RETIREES HEALTH INSURANCE

The employment policies of the City of New Albany are addressed in CHAPTER 34: EMPLOYMENT POLICIES of the New Albany Code. In addition, the New Albany Board of Public Works and Safety the CITY OF NEW ALABANY EMPLOYEE MANUAL on January 28, 1997. Said document is still in effect.

Section 34.15(A) of the New Albany Code specifically authorizes a mayor to issue executive orders to establish personnel policy, as long as they are consistent with “this subchapter”.

Section 34.17(D) of the New Albany Code indicates that the City of New Albany shall provide health insurance to its employees, spouses and dependents as adopted by the Board of Public Works and Safety. The New Albany Code is silent with respect to employees who have retired.

Page 17 paragraph F. of the Employee Manual speaks to health insurance. Full-time employees are to receive health insurance and issues related thereto are subject to change. The Employee Manual is silent with respect to employees who have retired.

All employees who are under a collective bargaining agreement—roughly 90% or more of the entire City workforce—receive health insurance in retirement. It is discriminatory not to provide health insurance to retirees not under a collective bargaining agreement.

Given Section 34.15(A) which specifically authorizes a mayor to issue executive orders to establish personal policy, I issued the Executive Order to provide health insurance to retirees that are PERF eligible.

PERSONAL (PERSONNEL?) EXPENSES – INSURANCE PAYMENTS FOR TERMINATED FIREFIGHTER

The employment policies of the City of New Albany are addressed in CHAPTER 34: EMPLOYMENT POLICIES of the New Albany Code. In addition, the New Albany Board of Public Works and Safety the CITY OF NEW ALABANY EMPLOYEE MANUAL on January 28, 1997. Said document is still in effect.

Section 34.15(A) of the New Albany Code specifically authorizes a mayor to issue executive orders to establish personnel policy, as long as they are consistent with “this subchapter or under a collective bargaining agreement”.

July 20, 2012
State Board of Accounts

Section 34.17(D) of the New Albany Code indicates that the City of New Albany shall provide health insurance to its employees, spouses and dependents as adopted by the Board of Public Works and Safety. The New Albany Code is silent with respect to employees who have been terminated.

The applicable collective bargaining agreement provides details with respect to employee health insurance. However, it is silent with respect to terminated employees.

The terminated firefighter was covered under the provisions of COBRA, but would otherwise be expected to pay the required insurance premiums. At the time the terminated firefighter had a spouse and children and no other source of income or insurance. The terminated firefighter and his family were at risk to become uninsured.

I did not want the terminated firefighter's family to be without insurance. So I ordered the Controller to pay three months insurance premiums through the authority vested in me by Section 34.15(A) of the New Albany Code.

OVERPAYMENTS – VACATION LEAVE PAID IN EXCESS OF AMOUNT ALLOWED

The employment policies of the City of New Albany are addressed in CHAPTER 34: EMPLOYMENT POLICIES of the New Albany Code. In addition, the New Albany Board of Public Works and Safety the CITY OF NEW ALABANY EMPLOYEE MANUAL on January 28, 1997. Said document is still in effect.

Section 34.15(A) of the New Albany Code specifically authorizes a mayor to issue executive orders to establish (or amend) personnel policy, as long as they are consistent with "this subchapter".

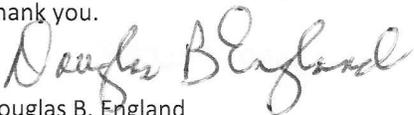
Section 34.17(A) is a chart that lists years of employment and weeks of vacation. 1 through 9 years of employment are entitled to 2 weeks of vacation; 10 through 19 years of employment are entitled to 3 weeks of vacation; and 20 years of employment or more are entitled to 4 weeks of vacation. The only qualifier in Section 34.17(A)—or in the Employment Policy Manual, for that matter—is "years of employment".

With respect to vacation leave there is no more guidance in the New Albany Code. In particular, there is nothing mentioned in Chapter 34 regarding new hires or rehires. That is the issue that was clarified through the Executive Orders that I issued as Mayor.

In conclusion, I contend that the auditors erred in rendering their comments and opinions regarding the issues addressed above. Had they examined the New Albany Code in addition to the documents and interviews they conducted, they would have known that a mayor of the city of New Albany has authority to issue executive orders establishing city personnel policy and these concerns and issue would be moot.

Therefore, I respectfully ask that these audit findings be reversed and the audit report be stricken from the record.

Thank you.


Douglas B. England
Former Mayor
City of New Albany, Indiana

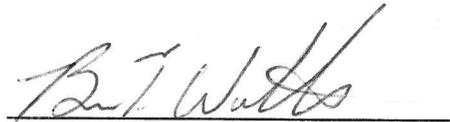
MAYOR
CITY OF NEW ALBANY
SUMMARY OF CHARGES

	<u>Charges</u>	<u>Credits</u>	<u>Balance Due</u>
Douglas B. England, former Mayor: Personal Expenses - Payments for Retirees Health Insurance, pages 4 through 6	\$ 1,320.00	\$ -	\$ 1,320.00
Douglas B. England, former Mayor/ Patricia Linck, former Public Safety Clerk, Jointly and Severally: Personal Expenses - Payments for Retirees Health Insurance, pages 4 through 6	1,320.00	-	1,320.00
Douglas B. England, former Mayor/ Kathlyn M. Garry, former Controller, Jointly and Severally: Personal Expenses - Payments for Retirees Health Insurance, pages 4 through 6	<u>660.00</u>	<u>-</u>	<u>660.00</u>
Total Personal Expenses - Payments for Retirees Health Insurance	<u>3,300.00</u>	<u>-</u>	<u>3,300.00</u>
Douglas B. England, former Mayor/ Nicholas W. Shavers, Jointly and Severally: Personal Expenses - Insurance Payments for Terminated Firefighter, page 6	<u>5,200.40</u>	<u>-</u>	<u>5,200.40</u>
Totals	<u>\$ 8,500.40</u>	<u>\$ -</u>	<u>\$ 8,500.40</u>

AFFIDAVIT

STATE OF INDIANA)
)
Floyd COUNTY)

I, Brian T. Watkins, Field Examiner, being duly sworn on my oath, state that the foregoing report based on the official records of the Mayor, City of New Albany, Floyd County, Indiana, for the period from January 1, 2011 to December 31, 2011, is true and correct to the best of my knowledge and belief.



Field Examiner

Subscribed and sworn to before me this 5 day of March, 2013.



Clerk of the Circuit Court