

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

EXAMINATION REPORT
OF

CLERK-TREASURER
CITY OF SOUTHPORT
MARION COUNTY, INDIANA

January 1, 2011 to December 31, 2011



FILED
07/09/2013

TABLE OF CONTENTS

<u>Description</u>	<u>Page</u>
Schedule of Officials	2
Transmittal Letter	3
Examination Results and Comments:	
Fines, Penalties, Interest, and Other Charges	4-5
Finance Charges – Late Payments to Vendor	5
Official Bond Coverage.....	5
Exit Conferences	6
Official Response	7-8
Summary of Charges	9
Affidavit	11

SCHEDULE OF OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Clerk-Treasurer	Catherine Hildebrand Diana Bossingham	08-17-08 to 12-31-11 01-01-12 to 12-31-15
Mayor	Hon. Robin Thoman Hon. V. Jesse Testruth	01-01-08 to 12-31-11 01-01-12 to 12-31-15
President of the Board of Public Works	Hon. Robin Thoman Hon. V. Jesse Testruth	01-01-11 to 12-31-11 01-01-12 to 12-31-13
President of the Common Council	Joe Turner James Cooney	01-01-11 to 12-31-11 01-01-12 to 12-31-13



STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF ACCOUNTS
302 WEST WASHINGTON STREET
ROOM E418
INDIANAPOLIS, INDIANA 46204-2769

Telephone: (317) 232-2513
Fax: (317) 232-4711
Web Site: www.in.gov/sboa

TO: THE OFFICIALS OF THE CITY OF SOUTHPORT, MARION COUNTY

We have examined the records of the Clerk-Treasurer 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 Examination Results and Comments. The financial transactions of this office are reflected in the Financial Statement Examination Report of the City of Southport for the year 2011.

STATE BOARD OF ACCOUNTS

February 1, 2013

CLERK-TREASURER
CITY OF SOUTHPORT
EXAMINATION RESULTS AND COMMENTS

FINES, PENALTIES, INTEREST, AND OTHER CHARGES

Penalties, interest and fines were levied against the City of Southport for year-end 2011 and the three prior years because federal tax and social security withholdings had not been made timely or there was incomplete reporting. A Federal Tax Lien was placed on the City of Southport's bank account by the U.S. Department of the Treasury on January 6, 2012. The Certificate of Release of Federal Tax Lien was subsequently issued on April 4, 2012.

In addition to the unpaid federal taxes and social security withholdings, various charges were made for late filing, late payments, interest, and fines. Civil fines were assessed for not properly filing Form W-2s in 2008 and 2009. The City incurred penalties, interest, and fines totaling \$8,113.16. All amounts due were paid to the Internal Revenue Service (IRS) in 2011 and in 2012.

Two civil fines were assessed by the IRS for failing to file the 2008 Form W-2s and late filing of the 2009 Form W-2s in the amounts of \$852.16 plus interest and other fees, in the amount of \$36.36, and \$1,400.00, respectively. The 2009 Form W-2s were filed in 2012 by the current administration.

During the fourth quarter of 2009 and each period in 2010 monthly withholding payments were not paid timely, causing penalty and interest to be assessed for late payments. Additionally, for the same time period the five quarterly reports (Form 941) were not submitted on time, but filed in May 2011. Penalty and interest charges were also incurred due to the late reporting. For late reporting and late payments the IRS assessed the City \$167.39 plus interest, in the amount of \$23.23.

In 2011, most of the monthly tax payments were not paid and the quarterly reports were not filed by the former Clerk-Treasurer, as required by the IRS. One electronic funds transfer (EFT) payment in the amount of \$1,703.46 was made in June 2011. Other 2011 check payments were written for the monthly liability, but the checks were held for an extended period of time or never sent at all. In January 2012, several checks written in 2011 were remitted to the federal government, as indicated by the bank statement. The oldest check was written July 2011. Approximately one half of the amount due for federal withholdings and social security were included in these payments. The unpaid balance of the 2011 withholding liability along with the fines, penalties, interest and other charges were then paid in 2012 by the current Clerk-Treasurer. Only the first quarter reporting (Form 941) was filed by the former Clerk-Treasurer. This report was filed in October 2011, but due in April. The other three quarterly reports for 2011 were not filed until March 2012. The IRS assessed the City \$5,200.78 plus interest and fees, in the amount of \$433.24 for failing to make timely withholding payments and timely reporting.

Below is a summary of the penalties, interest, and fees incurred and paid for by the City:

	<u>Penalties</u>	<u>Fees</u>	<u>Interest</u>	<u>Totals</u>
2008 – Civil Penalty	\$ 852.16	\$ 28.00	\$ 8.36	\$ 888.52
2009 - Civil Penalty	1,400.00	-	-	1,400.00
2009 and 2010 Penalties	167.39	-	23.23	190.62
2011 Penalties	<u>5,200.78</u>	<u>-</u>	<u>433.24</u>	<u>5,634.02</u>
Totals	<u>\$ 7,620.33</u>	<u>\$ 28.00</u>	<u>\$ 464.83</u>	<u>\$ 8,113.16</u>

CLERK-TREASURER
CITY OF SOUTHPORT
EXAMINATION RESULTS AND COMMENTS

We have requested Catherine Hildebrand, former Clerk-Treasurer, to reimburse the City, \$8,113.16 for charges incurred, as noted above, for fines, penalties, interest, and other charges paid in 2011 and 2012 to the U.S. Treasury which were assessed for not properly following the IRS guidelines during her term as Clerk-Treasurer. (See Summary of Charges, page 9)

Officials and employees have the duty to pay claims and remit taxes in a timely fashion. Failure to pay claims or remit taxes in a timely manner could be an indicator of serious financial problems which should be investigated by the governmental unit.

Additionally, officials and employees have a responsibility to perform duties in a manner which would not result in any unreasonable fees being assessed against the governmental unit.

Any penalties, interest or other charges paid by the governmental unit may be the personal obligation of the responsible official or employee.

(Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

Each governmental unit is responsible for compliance with all rules, regulations, guidelines, and directives of the Internal Revenue Service and the Indiana Department of Revenue. All questions concerning taxes should be directed to these agencies. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

FINANCE CHARGES - LATE PAYMENTS TO VENDOR

The City incurred, and subsequently paid, financial charges for delinquent payment of vendor invoices in the amount of \$620.87. The late payments occurred throughout the year and reflect the amount charged by the vendor for 2011. A similar comment appeared in prior Report B40042.

We have requested Catherine Hildebrand, former Clerk-Treasurer, to reimburse the City \$620.87 in finance charges incurred during 2011. (See Summary of Charges, page 9)

Officials and employees have the duty to pay claims and remit taxes in a timely fashion. Additionally, officials and employees have a responsibility to perform duties in a manner which would not result in any unreasonable fees being assessed against the governmental unit. Any penalties, interest or other charges paid by the governmental unit may be the personal obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

OFFICIAL BOND COVERAGE

Catherine Hildebrand, former Clerk-Treasurer, obtained a surety bond from Travelers Casualty and Surety Company of America in the amount of \$30,000 covering the period of January 1, 2010 to successor duly qualified. This surety bond ended at the conclusion of her term December 31, 2011.

CLERK-TREASURER
CITY OF SOUTHPORT
EXIT CONFERENCES

The contents of this report were discussed on February 4, 2013, with Catherine Hildebrand, former Clerk-Treasurer. The Official Response has been made a part of this report and may be found on pages 7 and 8.

The contents of this report were discussed on February 1, 2013, with Diana Bossingham, Clerk-Treasurer; Hon. V. Jesse Testruth, Mayor; and James Cooney, President of the Common Council.

This is my response to the 2011 Audit for the City of Southport.

When I was appointed to this position in August of 2008, I had no idea what I was getting into. The person elected to the office knowingly ran, and was supported by former Mayor, Nanette Tunget and the members of the Common Council prior to, and after the 2008 election, without being a citizen of the city. Dr. Robin Thoman was elected as Mayor of Southport in 2008 and immediately called into question the residency status of the elected Clerk-Treasurer, who not only lived outside of Southport city limits, but in a different county (Johnson). That CT resigned in July of 2008.

After interviewing numerous residents to find a replacement, I accepted the position that was sold to me as 'a few payables, receivables, and payroll', all of which I am qualified to perform. Once I researched more about what this position entailed, I realized it was much more than that, but had already accepted and was approved for the job. I had 3 'training' sessions, consisting of doing the monthly claims twice, and payroll once with the previous, disgruntled at this point, Clerk-Treasurer. There was no mention of the other responsibilities this job. I was left to train myself and thankfully found the ILMCT, who guided me through all that the CT's office was responsible for performing. Needless to say, I was overwhelmed at what I'd gotten into. I'm not one to quit and give up so easily, in hindsight I should have walked away from the office that year.

The Common Council was so outraged at Mayor Thoman, who had stopped their Christian prayers in his third month on office due to a complaint file by the ACLU. The Council made my job more difficult at every turn because I was chosen by the Mayor, therefore they assumed I 'worked' for him. The Council refused to let me pay claims, knowing full well I would be the person held liable and asked to repay any late fees incurred by their negligence. They didn't care. When I pleaded for an increase in salary so I could afford to quit working my full time job and devote more time to my office, they refused. Mayor Thoman submitted a salary ordinance for 2009, including a \$300 a year increase in the CT salary from \$14,700.00 annually to \$15,000.00. The Council refused the increase in the salary. There is no way for a single, unmarried mother to support herself on this salary so I always had to keep a full time position as well.

Being a business person, I worked business hours Monday through Friday, usually 8-5 or 9-6. This made it difficult to attend to all the cities needs in a timely manner. I had to schedule appointments on my lunch hour or evening hours and weekends. This made daily tasks very difficult and I informed the Council of the hardship they caused the CT office. There were intimidating threats made by a certain Councilor repeatedly and numerous times I was called a thief by these same people. It was a very hostile environment, but I do not give up so easily. I wanted to learn and do the job to the best of my ability. I attended conferences and took courses pertaining to the CT office as often as I could. I earned my IAMC in 3 years, but could not win the Council's approval. I continued to struggle doing all the work I needed to comply with Statute, but the limited time I had to put into the office left something to be desired. It continued this way my entire term in office.

In 2011, the Federal tax payment for wages was no longer accepted by the local bank. I tried to make online payments but could not get it to go through. I spoke with Avery Morgan, from the IRS several times to get help and send in the quarterly reports and the Fed. Payments. I continued to mail in the State's payment for wages. In October of 2011, I went to the Department of Revenue to discuss why Southport's wage payments were off. In the process, the person there discovered that the payments were all there, but some were applied to a different time period than where they posted.

As far as the Federal late fees and anything else I am being asked to repay, **I refuse to pay** on the basis of legal advice given to me at the time from the previous city attorney, citing IC 36-4-10-5, that I would be liable to repay any late fees, finance charges, and penalties, out of pocket. On a below poverty-level salary of \$14,700.00, \$8,734.03 is more than half of what I was paid. I did have a bond in place for my entire term (2008-2011) through Gregory & Appel. **I paid, personally, out of pocket in 2011 a sum ~ \$234.00, for which I never got a receipt. I am requesting that repaid to me and Southport can have my bond pay that as well.** I was unaware the bond would cover such costs and should have been informed at the time I paid. It's very deceitful not to provide full disclosure.

I believe Indiana needs to have minimum requirements for this office, specifically. I am unaware of any business or corporation that has no requirements for a Chief Financial Officer, which is what a Clerk-Treasurer is. Furthermore, it should be mandatory for this position to be full time and to provide a salary on which a person can live. . Luckily for the current CT, who took office in 2012, the Council gave an 83% increase in salary and is allowing her to hire a deputy. **It must be nice to get a raise with only a few months in office.** The fact that I endured the slandering from the Common Council should also be looked into formally. No Council or Mayor should be able to threaten, liable, or make false accusations in public without merit.

In closing, I'd like to say the current CT of Southport knows what she is doing; I believe the city is in better hands with her in place. I cannot say the same of the current Mayor, nor the returning Council members. My family has lived in the city for five generations and we don't plan on moving, but I will take legal action if any of the current administration speaks ill of me or my family about this. I will not be intimidated again. They cannot speak to my family members concerning this matter, I will not allow it.

Catherine Hildebrand

2/14/2013

CLERK-TREASURER
CITY OF SOUTHPORT
SUMMARY OF CHARGES

	<u>Charges</u>	<u>Credits</u>	<u>Balance Due</u>
Catherine Hildebrand, former Clerk-Treasurer:			
Fines, Penalties, Interest, and Other			
Charges, pages 4 and 5	\$ 8,113.16	\$ -	\$ 8,113.16
Finance Charges - Late Payments			
to Vendor, page 5	<u>620.87</u>	<u>-</u>	<u>620.87</u>
Totals	<u>\$ 8,734.03</u>	<u>\$ -</u>	<u>\$ 8,734.03</u>

This report was forwarded to the Office of the Indiana Attorney General and the local prosecuting attorney.

(This page intentionally left blank.)

AFFIDAVIT

STATE OF INDIANA)
)
Madison COUNTY)

We, Elizabeth R. Sternberg, Field Examiner, and Sommer Cannon, Field Supervisor, being duly sworn on our oaths, state that the foregoing report based on the official records of the Clerk-Treasurer, City of Southport, for the period from January 1, 2011 to December 31, 2011, is true and correct to the best of our knowledge and belief.

Elizabeth R. Sternberg
Field Examiner

Sommer M. Cannon
Field Supervisor

Subscribed and sworn to before me this 15th day of March, 2013.

Lane M. Spitzer
Notary Public

My Commission Expires: 9/26/2014

County of Residence: Madison