

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

AUDIT REPORT
OF
BOARD OF COUNTY COMMISSIONERS
LAKE COUNTY, INDIANA
January 1, 2012 to December 31, 2012



FILED
04/08/2014

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COUNTY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Auditor	Peggy Holinga Katona	01-01-11 to 12-31-14
President of the County Council	Jerome A. Prince Ted F. Bilski	01-01-12 to 12-31-12 01-01-13 to 12-31-13
President of the Board of County Commissioners	Gerry J. Scheub Roosevelt Allen Jr.	01-01-12 to 12-31-12 01-01-13 to 12-31-13



STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

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TO: THE OFFICIALS OF LAKE COUNTY

We have audited the records of the Board of County Commissioners for the period from January 1, 2012 to December 31, 2012, 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 Lake County for the year 2012.

STATE BOARD OF ACCOUNTS

August 21, 2013

BOARD OF COUNTY COMMISSIONERS
LAKE COUNTY
AUDIT RESULTS AND COMMENTS

ERRORS ON CLAIMS - CLAIM PAYMENT PRIOR TO BOARD ALLOWANCE

The 2012 minutes of the Board of County Commissioners noted that claims supporting manual checks issued by the County Auditor were not approved by the Board of County Commissioners until the month after issuance; two months for claims paid in July and September. This error resulted in \$76,962,510 expenditures which did not have proper Board of County Commissioners approval before payment.

The County's codified ordinances did not include an ordinance authorizing the County Auditor to prepay claims prior to the Board of County Commissioners' approval.

Indiana Code 5-11-10-1.6 states in part:

"(b) As used in this section, 'claim' means a bill or an invoice submitted to a governmental entity for goods or services.

(c) The fiscal officer of a governmental entity may not draw a warrant or check for payment of a claim unless: . . .

(5) payment of the claim is allowed by the governmental entity's legislative body or the board or official having jurisdiction over allowance of payment of the claim."

Indiana Code 36-2-6-4.5 states in part:

"(a) A county executive may adopt an ordinance allowing money to be disbursed for lawful county purposes under this section.

(b) Notwithstanding IC 5-11-10, with the prior written approval of the board having jurisdiction over the allowance of claims, the county auditor may make claim payments in advance of board allowance for the following kinds of expenses if the county executive has adopted an ordinance under subsection (a): . . .

(d) The county executive or the county board having jurisdiction over the allowance of the claim shall review and allow the claim at its next regular or special meeting following the preapproved payment of the expense."

DELINQUENT COLLECTION FEES FUND

In 2002, the Board of County Commissioners entered into a contract with Tax Management Associates (TMA) to identify undervalued or omitted personal property not properly recorded in the County's tax system. Once identified by TMA, the County pursued collection of the delinquent taxes through outside attorneys. Prior to July 2012, when collection from these properties occurred, the delinquent tax and the attorney fees paid by the property owner were receipted into the Delinquent Collections Fee Fund (TMA Fund 235). TMA and the outside attorneys were paid from this fund.

On July 17, 2012, the balance of TMA Fund 235 was \$2,783,808.52. On the advice of the Board of County Commissioners' Attorney, the County Auditor transferred \$1,262,616.09 from the fund (based upon expenses estimated by the County Attorney) to the Collection Expense Reimbursement Fund (386). The remaining \$1,521,192.43 in the fund was transferred into the newly established Undervalued and Omitted Property Fund (387).

BOARD OF COUNTY COMMISSIONERS
LAKE COUNTY
AUDIT RESULTS AND COMMENTS
(Continued)

After July 2012, collection of delinquent taxes from these types of properties was receipted into the Undervalued and Omitted Property Fund. Also, after July 2012, the attorney fees paid by the property owners were receipted into the Collections Expense Reimbursement Fund (386). According to the statute cited below, the County Auditor is obligated to distribute \$2,965,148.52 to the appropriate taxing districts as detailed below:

Description	Amount
Undervalued and omitted personal property taxes erroneously transferred to the Collection Expense Reimbursement Fund	\$1,262,616.09
Undervalued and omitted personal property taxes erroneously transferred to the new Undervalued and Omitted Property Fund	1,521,192.43
2012 Undervalued and omitted property tax collections	<u>240,390.00</u>
Subtotal	3,024,198.52
Less documented expenses of collection	<u>(59,050.00)</u>
Total to be distributed to taxing districts	<u><u>\$2,965,148.52</u></u>

Indiana Code 6-1.1-23-7 states:

"(a) With respect to the collection of delinquent personal property taxes, the county treasurer shall charge the following collection expenses to each delinquent taxpayer:

- (1) For making a demand by:
 - (A) registered or certified mail, eight dollars (\$8); or
 - (B) any other manner permitted by section 1 of this chapter, five dollars (\$5).
- (2) For making a levy, ten dollars (\$10).
- (3) For selling personal property, ten percent (10%) of the sale price.
- (4) For advertising a sale, the legal rates for advertising.
- (5) For transfer and storage of personal property, the actual expense incurred.
- (6) Other reasonable expenses of collection, including:
 - (A) title search expenses;
 - (B) uniform commercial code search expenses; and
 - (C) reasonable attorney's fees or court costs incurred:

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LAKE COUNTY
AUDIT RESULTS AND COMMENTS
(Continued)

- (i) in the collection process;
- (ii) due to a court order; or
- (iii) due to an order of the treasurer;

under IC 6-1.1-23-10

(b) The fees collected under this section are the property of the county and shall be deposited in the county general fund. The collection expenses incurred in connection with the levy upon and sale of personal property shall be paid from the county general fund without prior appropriation."

Indiana Code 6-1.1-36-12 states:

"(a) A board of county commissioners, a county assessor, or a township assessor (if any) may enter into a contract for the discovery of property that has been undervalued or omitted from assessment. The contract must prohibit payment to the contractor for discovery of undervaluation or omission with respect to a parcel or personal property return before all appeals of the assessment of the parcel or the assessment under the return have been finalized. The contract may require the contractor to:

- (1) examine and verify the accuracy of personal property returns filed by taxpayers with the county assessor or a township assessor of a township in the county; and
- (2) compare a return with the books of the taxpayer and with personal property owned, held, possessed, controlled, or occupied by the taxpayer.

(b) This subsection applies if funds are not appropriated for payment of services performed under a contract described in subsection (a). The county auditor may create a special non-reverting fund in which the county treasurer shall deposit the amount of taxes, including penalties and interest, that result from additional assessments on undervalued or omitted property collected from all taxing jurisdictions in the county after deducting the amount of any property tax credits that reduce the owner's property tax liability for the undervalued or omitted property. The fund remains in existence during the term of the contract. Distributions shall be made from the fund without appropriation only for the following purposes:

- (1) All contract fees and other costs related to the contract.
- (2) After the payments required by subdivision (1) have been made and the contract has expired, the county auditor shall distribute all money remaining in the fund to the appropriate taxing units in the county using the property tax rates of each taxing unit in effect at the time of the distribution.

(c) A board of county commissioners, a county assessor, or a township assessor may not contract for services under subsection (a) on a percentage basis."

BOARD OF COUNTY COMMISSIONERS
LAKE COUNTY
AUDIT RESULTS AND COMMENTS
(Continued)

COMMISSIONER TAX SALE DISTRIBUTION

Proceeds from the sale of property at the Commissioner's Tax Sale were recorded in the Commissioner Tax Sale Fund (385). The expenses related to the Commissioner's Tax Sale, i.e., professional services, advertising, appraisals, redemption of property, and any other related expenses were paid from this fund. In addition to the expenses paid from this fund, the County Auditor transferred monies from the Commissioner Tax Sale Fund (385) to various incentive funds. The transfers, based upon direction from the County Council during 2010, 2011, and 2012, are as follows:

Fund	2010	2011	2012
Auditor's Incentive Fund	\$ 100,000	\$ 236,000	\$ 236,000
Commissioner's Incentive Fund	100,000	250,000	300,000
Recorder's Incentive Fund	100,000	100,000	100,000
Treasurer's Incentive Fund	100,000	240,000	240,000
Total transfers received	<u>\$ 400,000</u>	<u>\$ 826,000</u>	<u>\$ 876,000</u>

According to Indiana Code 6-1.1-25-9, identified costs relating to the tax sale can be paid from the proceeds from the sale of property. Ordinance 1333A established amounts to be transferred to the incentive funds from the Commissioner Tax Sale Fund. The incentive funds were established to cover payroll costs associated with the Commissioner's Tax Sale. After payment of tax sale expenses, the County Auditor transferred a portion of the surplus Commissioner Tax Sale funds to the incentive funds. The cash balances of the Commissioner Tax Sale Fund and the Incentive Funds as of December 31, 2012, are as follows:

Fund	December 31, 2012 Cash Balance
Commissioner Tax Sale Fund	\$ 2,313,313
Auditor's Incentive Fund	358,108
Commissioner's Incentive Fund	294,511
Recorder's Incentive Fund	276,184
Treasurer's Incentive Fund	337,254

On April 15, 2013, the County Auditor distributed \$1,924,000 from the Commissioner Tax Sale Fund to the applicable taxing units.

Indiana Code 6-1.1-25-9(a) states:

"When a county acquires title to real property under IC 6-1.1-24 and this chapter, the county executive may dispose of the real property under IC 36-1-11 or subsection (e). The proceeds of any sale under IC 36-1-11 shall be applied as follows:

- (1) First, to the cost of the sale or offering for sale of the real property, including the cost of:

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LAKE COUNTY
AUDIT RESULTS AND COMMENTS
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- (A) maintenance;
 - (B) preservation;
 - (C) administration of the property before the sale or offering for sale of the property;
 - (D) unpaid costs of the sale or offering for sale of the property;
 - (E) preparation of the property for sale;
 - (F) advertising; and
 - (G) appraisal.
- (2) Second, to any unrecovered cost of the sale or offering for sale of other real property in the same taxing district acquired by the county under IC 6-1.1-24 and this chapter, including the cost of:
- (A) maintenance;
 - (B) preservation;
 - (C) administration of the property before the sale or offering for sale of the property;
 - (D) unpaid costs of the sale or offering for sale of the property;
 - (E) preparation of the property for sale;
 - (F) advertising; and
 - (G) appraisal.
- (3) Third, to the payment of the taxes on the real property that was removed from the tax duplicate under section 4(c) of this chapter.
- (4) Fourth, any surplus remaining into the county general fund."

COLLECTION EXPENSES WITHHELD FROM SETTLEMENT DISTRIBUTION

The County Auditor distributed property tax collections in June 2012. Litigation expenses associated with two large property tax cases were withheld from the June 2012 settlement involving the following taxing units:

BOARD OF COUNTY COMMISSIONERS
LAKE COUNTY
AUDIT RESULTS AND COMMENTS
(Continued)

<u>Taxing Unit</u>	<u>Amount</u>
Calumet Township	\$ 889,138.27
Hammond	22,541.65
East Chicago	130,490.68
Whiting	<u>161,232.20</u>
 Total	 <u><u>\$ 1,203,402.80</u></u>

The Board of County Commissioners' attorney directed the County Auditor to deduct these amounts from the tax settlement of the units listed above, and to record the amounts as additions to the County's Collection Expense Reimbursement Fund.

We are unaware of any statutory authority to withhold these amounts from these respective taxing units. As of July 30, 2013, this has not been corrected.

The county auditor is authorized to make distributions of funds due the State of Indiana and local governmental units within the county without allowance or approval of the board of county commissioners. Distributions of property taxes, bank, building and loan taxes, license excise taxes and any other distribution which includes two (2) or more funds or sources shall be accompanied by a Certificate of Tax Distribution, Form No. 22 (Rev. 1985). If a distribution (other than property tax settlement) includes only one fund or source and the fund or source is shown on the warrant, it is not necessary to furnish a certificate of tax distribution.

Warrants for all distributions should be made payable to the fiscal officer or treasurer of the governmental unit by title, for example: Trustee, Washington Township; Clerk-Treasurer, Town of Rockville, Treasurer, North Putnam Community School Corporation. The personal name of a public official should not be shown on any warrant payable to a state agency or local governmental unit. (Accounting and Uniform Compliance Guidelines Manual for County Auditors of Indiana, Chapter 7)

BOARD OF COUNTY COMMISSIONERS
LAKE COUNTY
EXIT CONFERENCE

The contents of this report were discussed on August 21, 2013, with Roosevelt Allen Jr., President of the Board of County Commissioners; John S. Dull, County Attorney; and Tramel Raggs, Administrator. The Official Response has been made a part of this report and may be found on pages 11 through 15.



**OFFICE OF THE ATTORNEY
TO THE BOARD OF COMMISSIONERS**

John S. Dull

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August 22, 2013

Bruce Hartman
State Examiner
State Board of Accounts
302 W. Washington, 4th Floor-Rm. 418
Indianapolis, IN 46402

RE -- Audit Comments
2012 Audit of Lake County Commissioners

Dear Mr. Hartman:

These comments are submitted in regard to the following sections in the audit comments prepared by the State Board of Accounts. The following four (4) comments are submitted on behalf of the Lake County Board of Commissioners.

1. Claim Payment Prior to Board Allowance

In July and September there was claim payment prior to Board allowance in the finding. The claims were approved by two Commissioners prior to payment. The normal procedure is to then have these claims put on the Commissioners' agenda for ratification as is permitted under IC 36-1-4-16.

The statute cited by the State Board of Accounts is IC 36-2-6-4.5 which in part states: "A county executive may adopt an ordinance allowing money to be dispersed for lawful county purposes under this section". This section applies to all counties except Lake, St. Joseph, and Marion since in these units it is the county or city council as the legislative body which has this power. The power for the Commissioners to act and the reason why there was no error is that the Commissioners approved the payments prior to processing.

2. Commissioner Tax Sale Distribution

The money in this Fund 385 is from the sale of Commissioner Tax Sale Certificates. These sales were initiated as a result of a law passed in 2003. As Public Law 170-2003 and codified as IC 6-1.1-24-6.1. The County Council has since that time enacted ordinances giving money from that fund to the Auditor, Treasurer, Recorder, Commissioners, and the County Attorney's office for the services they provide to the fund. The County Attorney's ordinance takes effect for 2012.

The sales have occurred for 11 years and the money in the fund net of the distribution as incentive payments should have been distributed to the units of government but never was. This year the money will be distributed, but it was necessary to reimburse the County Attorney's office for its expenses. The County Attorney is involved in two ways with the sale. First and foremost is the involvement with the Treasurer's tax sale from which if there is no bid on the property the Commissioners receive a tax sale certificate. Second, the tax sale certificates are sold at a separate auction. The involvement in these two areas consumes approximately 20 percent of the time of the County Attorney and his secretary on an annual basis. This percentage varies by week but bulks large just before a Treasurer's tax sale and a Commissioner certificate sale. Then, there are the innumerable questions after each sale from buyers and elected officials.

The number of 3 percent was arrived at by costing out the actual salaries, retirement payments, social security payments, workman's comp/unemployment compensation, and health benefit costs for the two aforementioned positions. The cost averages about \$27,000.00 per year to which was added \$1,310.00 to cover the estimated cost of supplies, telephone and similar items. The total is \$28,310.00 which over 11 years amounts to 3 percent of the total revenue of \$10,380,458.97 collected as identified in the audit report.

3. Delinquent Collection Fees Fund

Lake County contracted with TMA in 2002 for personal property audits to identify undervalued or omitted personal property. TMA only made the valuation determination. The County itself had to do the collections.

After paying TMA, the balance in the fund was almost \$2.8 million. The program activity extended over 10 years from 2002 into 2011. The monies in the fund should have been distributed to the units net of expenses during the period of time that it was collected. The County made a decision to distribute the money in 2012.

Starting in 2002, one person in the Assessor's office worked with personal property audits entirely. This person devoted 100 percent of their time to TMA and personal property. In addition, the County Attorney's office spent approximately 10 percent of the time of the County Attorney and its secretary on this collection effort. This TMA program was one of the major programs instituted by the previous Assessor who devoted a very significant amount of time to this project over the period 2002-2009. In addition, the office manager of the former and current Assessor over an 11 year period was actively involved in the collection. Since the new Assessor took office in 2010, his chief deputy has been actively involved in this program. At the Treasurer's Office, one employee devoted a very significant amount of time over the 10 year period to identify and recording the monies received and then paid out. Lastly, the Lake County Auditor recorded the transactions.

The reason for the substantial size of the estimate is that in addition to the actual salaries, county's social security contributions, retirement contributions, and unemployment contributions on an actual basis, there was a substantial amount of money paid out for and on behalf of one or more of the people involved as health care benefits. Thus, the size of the estimate reflects actual health costs on behalf of at least one (1) employee and these costs have been validated. Due to HIPPA confidentiality restrictions, those costs cannot be revealed in this response. For that reason they are noted, but no documentation is provided. If the State Board of Accounts and State Examiner would like to review the documentation without the County identifying the employee, that may be possible.

In this comment on Delinquent Collection Fees Fund the State Board of Accounts has cited IC 6-1.1-23-7. This statute does not apply to TMA which is covered by IC 6-1.1-36-12. That company was hired for the sole purpose of discovering omitted or under value property. The county does have collection attorneys who are authorized under IC 6-1.1-23-7 to collect personal property taxes but this is not Tax Management Associates. These other attorneys do not investigate personal property assets but take an existing personal property tax bill which is delinquent and seek collection.

4. Collection Expenses Withheld from Settlement Distribution

At the June, 2012 settlement monies were withheld from Calumet Township and the cities of Hammond, East Chicago, and Whiting based upon the direction of the County Attorney. The Assessor's office has to defend assessment appeals for property tax cases. These decisions originate with local assessors and date back to at least 2004 and the recent cases filed by Majestic Star in Calumet Township and BP in North Township. The county out of its self insurance liability fund incurred substantial expense in their defense.

In the case of Majestic Star, that included monies paid to a major out of state firm to defend the cases along with substantial payments to local counsel who is not an employee. The same two parties along with appraisers and experts were involved in the defense of various proceedings involving the two companies. The monies the County Attorney directed to be withheld represent the litigation expenses that were not reimbursed in any fashion by either BP or Majestic Star.

In IC 36-1-4-17 a unit has the authority to collect any money owed to the unit and to compromise the amount of money due the unit. The defense of assessment reductions is the reverse side of collecting money. Since a successful defense will yield a greater tax bill owed by the property owner under IC 36-1-4-17 a unit can determine the costs of its action and seek collection. In this case, there is a negative collection in that the costs are incurred on behalf of units other than the county. The only statutory way to recoup the money spent in defense of these appeals is to withhold it from the unit. This is analogous to the situation where the county makes a tax refund and then charges the unit its pro rata share of that refund. In the instance of the withholding from the June, 2012 settlement distribution the pro rata share of the bills was withheld from the appropriate units.

5. Commissioner Tax Sale Distribution

The Lake County Commissioners are authorized by IC 6-1.1-24-6.1 to sell Commissioner owned tax sale certificates. The statute authorizes the deduction of costs to the county executive directly attributable to the sale of the certificate of sale. In addition, IC 36-1-14-7 authorizes a unit to determine the cost of collecting money under Section (b)(1).

Under the provisions of IC 36-1-3 which is the home rule statute Lake County as a unit has all powers and any doubt as to the existence of a power shall be resolved in favor of its existence under IC 36-1-3-3(b). The Lake County Council as the county's legislative body has enacted ordinances authorizing the allocation of the incentive funds under IC 36-1-3-6(c). Thus, incentive funds are authorized by the home rule powers given statutorily to the Lake County Council.

The State Board of Accounts have cited IC 6-1.1-25-9 as its authority for the comment. This section applies to only to the situation "(a) When a county acquires title to real property under IC 6-1.1-24 and this chapter..." The chapter they are referring to is Chapter 25 of Title 6, Article 1.1 which is applicable in those situations where the county takes the tax certificate that it has acquired and follows the procedure

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under Chapter 25 to acquire title. Then, subsequent to acquiring that title the county sells the property since it is the owner of the fee interest. In the case of the sale of Commissioner Owned tax sale certificates the county is not selling title to the real estate in fee but is selling a bundle of rights which can be perfected into a tax deed.

Sincerely,

ATTORNEY TO THE BOARD OF COMMISSIONERS



John S. Dull

JSD/rmk

CC: Board of Commissioners
Lake County Field Office, State Board of Accounts