



## INSPECTOR GENERAL REPORT

2009-02-0018

November 30, 2009

### SBOA REPORTING OF FINANCIAL LOSSES

*Inspector General David O. Thomas reports as follows:*

This report involves a recommendation to the Indiana Legislature for the limited amendment to the enabling statute of the Indiana State Board of Accounts (SBOA) in IC 5-11 to reflect what is currently occurring with regard to the reporting of financial losses to the State.

The Office of the Inspector General (OIG) has the duty to recommend legislation and provide advice to the Legislature, Governor and state agencies regarding the deterrence and prevention of financial losses to the State.

IC 4-2-7-2.

The purpose of this recommendation is to facilitate the collection of financial losses to the State as determined by the SBOA.

Accordingly, the OIG accordingly makes the following findings:

1

Currently IC 5-11-6-1 and IC 5-11-6-3 provide that an SBOA finding of a financial loss to the State will be certified to the Indiana Attorney General for

collection.

2

The OIG was empowered in Public Law 222-2005 to certify financial loss cases to the Attorney General, who may subsequently file a civil action to collect financial losses to the State. IC 4-2-7-6.

3

The SBOA currently and voluntarily provides its reports which include these findings to the OIG, and the OIG enjoys its partnership with the SBOA in the joint-investigation and auditing of various cases.

4.

This amendment would not expand or change the existing authority of the OIG, but instead would statutorily formalize the reporting procedure which is voluntarily occurring.

The OIG accordingly and respectfully makes the following recommendation to the Indiana Legislature:

1.

That IC 5-11-5-1, IC 5-11-6-1 and IC 5-11-6-3 be amended to require the SBOA to report to the OIG all findings of financial loss to the State through

SBOA audits and reviews so that the OIG will be officially notified to assist the Attorney General in the collection of these determinations pursuant to IC 4-2-7-6.

Possible language could be the highlighted language in the below existing statutory provisions.

#### **IC 5-11-5-1**

##### **Reports of examination; copies; disclosure of examination results prohibited**

Sec. 1. (a) Whenever an examination is made under this article, a report of the examination shall be made. The report must include a list of findings and shall be signed and verified by the examiner making the examination. A finding that is critical of an examined entity must be based upon one (1) of the following:

(1) Failure of the entity to observe a uniform compliance guideline established under IC 5-11-1-24(a).

(2) Failure of the entity to comply with a specific law.

A report that includes a finding that is critical of an examined entity must designate the uniform compliance guideline or the specific law upon which the finding is based. The reports shall immediately be filed with the state examiner, and, after inspection of the report, the state examiner shall immediately file one (1) copy with the officer or person examined, one (1) copy with the auditing department of the municipality examined and reported upon, and one (1) copy in an electronic format under IC 5-14-6 of the reports of examination of state agencies, instrumentalities of the state, and federal funds administered by the state with the legislative services agency, as staff to the general assembly. Upon filing, the report becomes a part of the public records of the office of the state examiner, of the office or the person examined, of the auditing department of the municipality examined and reported upon, and of the legislative services agency, as staff to the general assembly. A report is open to public inspection at all reasonable times after it is filed. If an examination discloses malfeasance, misfeasance, or nonfeasance in office or of any officer or employee, a copy of the report, signed and verified, shall be placed by the state examiner with the attorney general **and the inspector general**. The attorney general shall diligently institute and prosecute civil proceedings against the delinquent officer, or upon the officer's official bond, or both, and against any other proper person that will secure to the state or to the proper municipality the recovery of any funds misappropriated, diverted, or unaccounted for.

(b) Before an examination report is signed, verified, and filed as required by subsection (a), the officer or the chief executive officer of the state office, municipality, or entity examined must have an opportunity to review the report and to file with the state examiner a written response to that report. If a written response is filed, it becomes a part of the examination report that is signed, verified, and filed as required by subsection (a).

(c) Except as required by subsection (b), it is unlawful for any deputy examiner, field examiner, or private examiner, before an examination report is made public as provided by this section, to make any disclosure of the result of any examination of any public account, except to the state examiner or if directed to give publicity to the examination report by the state examiner or by any court. If an examination report shows or discloses the commission of a crime by any person, it is the duty of the state examiner to transmit and present the examination report to the grand jury of the county in which the crime was committed at its first session after the making of the examination report and at any subsequent sessions that may be required. The state examiner shall furnish to the grand jury all evidence at the state examiner's command necessary in the investigation and prosecution of the crime.

*(Formerly: Acts 1917, c.115, s.1.) As amended by Acts 1980, P.L.30, SEC.16; P.L.3-1986, SEC.18; P.L.39-1996, SEC.5; P.L.28-2004, SEC.57.*

#### **IC 5-11-6-1**

#### **Taxpayer petition; examination of public contracts; prosecutions resulting therefrom**

Sec. 1. (a) The state examiner, personally or through the deputy examiners, field examiners, or private examiners, upon the petition of twenty-five (25) interested taxpayers showing that effective local relief has not and cannot be obtained after due effort, shall make the inquiries, tests, examinations, and investigations that may be necessary to determine whether:

(1) any public contract has been regularly and lawfully executed and performed; or

(2) any public work, building, or structure has been or is being performed, built, or constructed in accordance with the terms and provisions of the contract, and in compliance with the plans and specifications, if any.

Upon a written petition of twenty-five (25) taxpayers the state examiner may also require all plans, specifications, and estimates to be submitted to the state examiner for corrections and approval before a contract is awarded.

(b) The state examiner, deputy examiner, and any field examiner, when engaged in making an inquiry, test, examination, or investigation under subsection (a), is entitled to examine and inspect any public records, documents, data, contracts, plans, and specifications contained or found in any public office or other place pertaining or relating to the public contract or public work, building, or structure. In addition, subpoenas may be issued to witnesses to appear before the examiner in person or to produce books and papers for inspection and examination. The state examiner, deputy, field, and private examiner may administer oaths and examine witnesses under oath either orally or by interrogatories on all matters under examination and investigation. Under order of the state examiner the examination may be transcribed, with the reasonable expense paid by the municipality in the same manner as the compensation of the field examiner is paid.

(c) The state examiner, the deputy examiner, and a field examiner may enforce attendance and answers to questions and interrogatories, as provided by law, with respect to examinations and investigations made by the state examiner, deputy examiner, field examiner, or private examiner of public offices.

(d) The state examiner, deputy examiner, any field examiner, and any private examiner, when making an examination or investigation under subsection (a), shall examine, inspect, and test the public works, buildings, or structures in the manner that the examiner sees fit to determine whether it is being performed, built, or constructed according to the contract and plans and specifications.

(e) The state examiner shall file a report covering any examination or investigation that discloses:

(1) fraud, collusion, misconduct, or negligence in the letting or the execution of any public contract or in the performance of any of the terms and conditions of any public contract; or

(2) any failure to comply with the terms or conditions of any public contract in the construction of any public work, building, or structure or to perform, build, or construct it according to the plans and specifications, if any, provided in the contract; that causes loss, injury, waste, or damage to the state, the municipality, taxing or assessment district, other public entity, or to its citizens, if it is enforceable by assessment or taxation.

(f) The report must be:

(1) made, signed, and verified in quadruplicate by the examiner making the examination; and

(2) filed promptly with the state examiner.

After inspection of the report, the state examiner shall file a copy of the report with the attorney general **and the inspector general.**

(g) The attorney general shall diligently institute and prosecute civil proceedings

against any or all officers, individuals, and persons in the form and manner that the attorney general determines will secure a proper recovery to the state, municipality, taxing or assessment district, or other public entity injured, defrauded, or damaged by the matters in the report. These prosecutions may be made by the attorney general and the recovery may be had, either upon public official bonds, contractors' bonds, surety or other bonds, or upon individual liability, either upon contract or in tort, as the attorney general determines is wise. No action or recovery in any form or manner, or against any party or parties, precludes further or additional action or recovery in any other form or manner or against another party, either concurrently with or later found necessary, to secure complete recovery and restitution with respect to all matters exhibited, set out, or described in the report. The suits may be brought in the name of the state on the relation of the attorney general for the benefit of the state, or the municipality, taxing or assessment district, or other public entity that may be proper. The actions brought against any defendants may be joined, as to parties, form, and causes of action, in the manner that the attorney general decides.

(h) Any report described in this section or a copy duly certified by the state examiner shall be taken and received in any and all courts of this state as prima facie evidence of the facts stated and contained in the reports.

(i) If an examination, investigation, or test is made without a petition being first filed and the examination, investigation, or test shows that the terms of the contract are being complied with, then the expense of the examination, investigation, or test shall be paid by the state upon vouchers approved by the state examiner from funds available for contractual service of the state board of accounts. If such a report shows misfeasance, malfeasance, or nonfeasance in public office or shows that the terms of the plans and specifications under which a contract has been awarded are not being complied with, it is unlawful to make the report public until the report has been certified to the attorney general.

*(Formerly: Acts 1923, c.120, s.1.) As amended by P.L.3-1986, SEC.20.*

### **IC 5-11-6-3**

#### **Public wrongdoing; institution of civil proceeding**

Sec. 3. If any examination or investigation made by the state examiner personally or through a deputy examiner, field examiner, or private examiner under of this chapter or of any other statute discloses:

(1) malfeasance, misfeasance, or nonfeasance in office, or of any officer or employee;

(2) that any public money has been:

(A) unlawfully expended, either by having been expended for a purpose not authorized by law in an amount exceeding that authorized by law, or by having been paid to a person not lawfully entitled to receive it; or

(B) obtained by fraud or in any unlawful manner; or

(3) that any money has been wrongfully withheld from the public treasury; a duly verified copy of the report shall be submitted by the state examiner to the attorney general, who shall institute and prosecute civil proceedings as provided in section 1 of this chapter, **and to the inspector general.**

*(Formerly: Acts 1923, c.120, s.3.) As amended by P.L.3-1986, SEC.21.*

Dated this 30<sup>th</sup> day of November, 2009.



David O. Thomas, Inspector General