

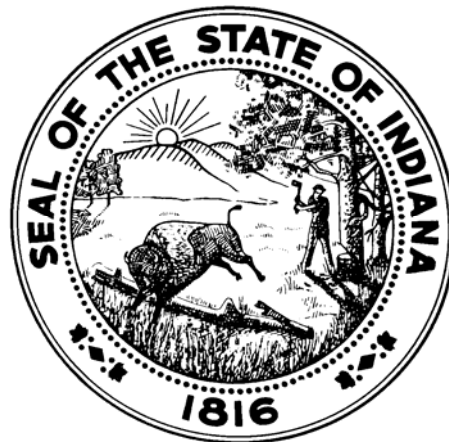
**STATE BOARD OF ACCOUNTS**  
**302 West Washington Street**  
**Room E418**  
**INDIANAPOLIS, INDIANA 46204-2769**

SPECIAL REPORT  
OF

PURCHASE OF AND INTENDED IMPROVEMENTS  
TO 105 NORTH MAIN STREET  
LINDEN, INDIANA  
BY THE LINDEN TOWN BOARD

TOWN OF LINDEN  
MONTGOMERY COUNTY, INDIANA

April 12, 2007 to July 24, 2007



**FILED**  
08/22/2007



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OFFICIALS

Office

Official

Term

Clerk-Treasurer

Janet Heide

03-04-04 to 12-31-07

President of the Town Council

Gary Fike

01-01-04 to 12-31-07



**STATE OF INDIANA**  
AN EQUAL OPPORTUNITY EMPLOYER

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TO: THE OFFICIALS OF THE TOWN OF LINDEN, MONTGOMERY COUNTY, INDIANA

We have made reasonable tests and inquiries of the transactions related to the Linden Town Council's purchase of real property and building commonly known as 105 North Main Street, Linden, Indiana, pursuant to a taxpayer petition filed under provisions of Indiana Code 5-11-6-1. The scope of our examination was limited to activities related to the questions contained in the petition. Our findings are based on files and records provided by the Clerk-Treasurer's Office. We did not perform an audit in accordance with generally accepted auditing standards or the standards applicable to financial and performance audits contained in Government Auditing Standards issued by the Comptroller General of the United States.

The results of our tests and inquiries are contained in the attached comments. Due to the nature of the report, we have restated the questions raised in the taxpayer petition followed by the State Board of Accounts comments relating to those questions.

STATE BOARD OF ACCOUNTS

July 24, 2007

PURCHASE OF AND INTENDED IMPROVEMENTS  
TO 105 NORTH MAIN STREET  
LINDEN, INDIANA  
BY THE LINDEN TOWN BOARD  
TOWN OF LINDEN, MONTGOMERY COUNTY

PETITION QUESTION 1.

Does the purchase of the property at 105 North Main Street in Linden for \$24,999 plus any property taxes or ditch assessment taxes due in 2008 constitute a violation of the public purchase law?

State Board of Accounts Comments

On April 12, 2007, the Town entered into an installment real estate contract with JB Rentals to buy improved real estate commonly known as 105 North Main Street, Linden, Indiana. The contract indicates the Town is to pay \$24,999 and any ditch assessments or property taxes payable with the second installment 2008 and thereafter. \$2,000 was to be paid prior to or upon the execution of this contract, at which time the Town would have possession of the property. This was not paid until May 7, 2007. The balance owed of \$22,999 is not due until Madison Township buys the current town hall, but no later than November 30, 2009, with any interim payments applied to reducing principal.

Review indicated ditch assessment taxes, \$15 paid in 2007, are collected with the first installment and would not impact the second installment in 2008. Subsequent ditch assessments would be normal obligations of the Town.

Review of any property taxes to be paid in the second installment of 2008 indicates some taxes will be payable but the amount is undetermined since there is no rate established and the installment contract has not been recorded or transferred for assessment. The Montgomery County Auditor's office has indicated the actual date the transfer is completed will be used for taxing purposes. Once transferred, the Town would be exempt from paying property taxes. As of July 24, 2007, no transfer has been recorded for this transaction which indicates some 2008 second installment taxes will be due. Although the tax bill may be sent to the seller, the installment contract indicates the Town is responsible for any 2008 second installments due.

Pursuant to Indiana Code 36-1-10.5-1(b)(1), the phrase "total cost" indicates any costs agreed to in order to purchase the property. In this situation the Town in the Installment Real Estate Contract has agreed to pay \$24,999 and is also agreeing to assume and pay real estate taxes. This would be deemed as a cost in the total price of the purchase. Based on amounts paid for first installment 2007 of more than \$500 for this property, an amount due currently for second installment 2008 would put the cost of this purchase in excess of \$25,000.

In this transaction, it appears the Town is not in compliance with the provisions of the purchase of land or structures law in Indiana Code 36-1-10.5.

PETITION QUESTION 2.

Did the Town have enough money set aside to award nearly \$45,000 of work to be done on the newly acquired building at 105 North Main Street, Linden, Indiana?

PURCHASE OF AND INTENDED IMPROVEMENTS  
TO 105 NORTH MAIN STREET  
LINDEN, INDIANA  
BY THE LINDEN TOWN BOARD  
TOWN OF LINDEN, MONTGOMERY COUNTY  
(Continued)

State Board of Accounts Comments

Review of records and inquiry indicated the Town had sufficient funds appropriated in the Cumulative Capital Development fund, Cumulative Capital Improvement fund, and a donation of \$20,000 from the Town's engineering consultant Ken Smith of Municipal Civil Corporation which was designated for the purchase and/or renovation of this building.

June 7, 2007, board minutes indicated bids were accepted for renovation work on the 105 North Main Street building, which would be the new town hall. These documents were not on file in the Clerk-Treasurer's office, but were in the possession of the Town Council president Gary Fike. Upon review of these documents, they were found to be quotes only. No signed contracts or specifications were presented. Additionally, there was no indication that the Board invited quotes by mail, from three persons known to deal in the class of work proposed to be done. The quotes were; Hobson Electrical, \$23,583; Kunkel Plumbing, \$8,000; and Comfort Mechanical, \$11,589. Total for this project let was \$43,172.

Indiana Code 36-1-12-4.7(a) states in part: "This section applies whenever the cost of a public work project is estimated to cost: (1) at least twenty-five thousand dollars (\$25,000) and less than seventy-five thousand dollars (\$75,000) in: (A) a consolidated city or second class city; (B) a county containing a consolidated city or second class city; or (C) a regional water or sewage district established under IC 13-26; or (2) at least twenty five thousand dollars (\$25,000) and less than fifty thousand dollars (\$50,000) in a political subdivision or an agency not described in subdivision (1)."

Indiana Code 36-1-12-4.7(b) states in part: "The board shall invite quotes from at least three (3) persons known to deal in the class of work proposed to be done by mailing them a notice stating that plans and specifications are on file in a specified office. The notice must be mailed not less than seven (7) days before the time fixed for receiving quotes. (2) The board may not require a person to submit a quote before the meeting at which quotes are to be received. The meeting for receiving quotes must be open to the public. All quotes received shall be opened publicly. . . . (3) The board shall award the contract for the public work to the lowest responsible and responsive quoter. (4) The board may reject all quotes submitted."

In this situation, the Town had sufficient funds for the work to be done but was not in compliance with public works statutes.

PURCHASE OF AND INTENDED IMPROVEMENTS  
TO 105 NORTH MAIN STREET  
LINDEN, INDIANA  
BY THE LINDEN TOWN BOARD  
TOWN OF LINDEN, MONTGOMERY COUNTY  
EXIT CONFERENCE

The contents of this report were discussed on July 27, 2007, with Janet Heide, Clerk-Treasurer.

The contents of this report were discussed on July 27, 2007, with Tom Lewellen, Town Board Member; and Stu Weliever, Attorney for the Town of Linden. The official response has been made a part of this report and may be found on pages 7 through 13.



# HH&W

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Chase Harding (1899-1956)  
Robert B. Harding (1933-1977)  
Carl F. Henthorn, Retired

August 13, 2007

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

RE: OFFICIAL RESPONSE  
TOWN OF LINDEN, MONTGOMERY COUNTY

Dear Sir or Madam:

Our office represents the Town of Linden. Please consider this to be an official response to the opinion being issued by the State Board of Accounts (SBA) regarding the purchase and intended improvements to 105 North Main Street, Linden, Indiana. The Town strongly believes that the process and procedures utilized in purchasing the 105 North Main Street property were in full compliance with Indiana Law. In addition, the Town contends that the intended renovations to the same property were done in a manner fully consistent with Indiana Law. The SBA opinion is broken down into two questions and this letter will follow that same format.

## PETITION QUESTIONS NO. 1

I.C. § 36-1-10.5-1 (b) clearly identifies that this statute does not apply to the purchase of real property having a total price (including land and structures, if any) of \$25,000.00 or less. (Emphasis added) The real estate contract in question states that the purchase price for the real estate is the sum of \$24,999.00 for all land and structures on the property. If the State legislature had intended to include other types of costs in determining the total purchase price then the statute would have stated including land, structures and any other costs of purchase. SBA is twisting and contorting the wording of the statute in its attempt to reach a conclusion that it desires to come up with. Under the logic being asserted by SBA then such other costs as insurance, attorney fees, recording fees and other similar type costs should be added to the total purchase price. It is not logical, either from a common sense or accounting perspective, to add potential real estate taxes to the term "purchase price."

As stated earlier, the contract itself states that the purchase price is \$24,999.00. The Contract in this instance was signed on April 16, 2007. Since it is being purchased by a governmental entity, it will become exempt from real estate property taxation. Accordingly, there is a question of whether there will be any second installment of real estate taxes due in 2007 payable 2008. The presumption of no tax due is one of the presumptions that the Buyer and Seller in this contract were making.

It is also believed that under general accounting principles Linden's tax basis in the property would be the stated purchase price \$24,999.00. It would not be allowed to add payment of real estate taxes to its basis in the property. Accordingly, the SBA taking the position that real estate taxes should be added to the purchase price is contrary to generally accepted accounting principles.

The Town believes that its purchase of the property at 105 North Main Street complies with applicable State Law. The Town does not agree with the contorted reading of I.C. § 36-1-10.5-1 in adding any amounts to the stated purchase price. However, the Town also believes that it does not make common or financial sense to keep running into this brick wall in the future. In light of this common sense position, the Town will enter into a Modification Agreement with the Seller which will clarify that Seller is responsible for all property taxes on the real estate and addresses an issue of Seller maintaining its roofing and plumbing structures on a second floor. This Modification Agreement addresses the concerns set forth in the SBA Opinion Letter. A copy of the Modification Agreement is enclosed with this letter.

#### PETITION QUESTIONS NO. 2

The Town fully believes that it has complied with the applicable statutory provisions relating to renovation work on the 105 North Main Street building. The original SBA letter given to the Town cited I.C. § 36-1-12-4 (a) in support of its position that there is a violation by the Town. However, the statute cite used by SBA was an out of date cite which had been repealed. The current version of I.C. § 36-1-12-4 (a) is enclosed with this letter. The current version of I.C. § 36-1-12-4 (a) states that this section applies whenever the costs of a public work project will be at least \$75,000.00 in a consolidated city or second class city or in a county containing a consolidated city or second class city, or at least 50,000.00 in a political subdivision or agency not described in subdivision (1). As stated in the original SBA letter, the total project cost in this matter was \$43, 172.00. The statute originally being cited by SBA does not apply. However, I.C. § 36-1-12-4.7 does apply in this instance. A copy of this statute is enclosed with this letter. Subsection 4.7 (a) states that this section applies whenever a public work project is estimated to cost at least \$25,000.00 and less than \$100,000.00 in a consolidated city, second class city or third class city with a population of 15,000 or more, or in a county containing a consolidated city, second class city, or a regional water or sewer district. This statute also applies

State Board of Accounts  
August 13, 2007  
Page Three

to a public work project that is estimated to be at least \$25,000.00 and less than \$50,000.00 in a political subdivision or agency not described in subdivision (1). I.C. § 36-1-12-4.7 is the statute that applies in this instance, not I.C. § 36-1-12-4 as originally alleged. The Town believes that the provisions under Section 36-1-12-4.7(b) were substantially complied within that there was an invitation of quotes to at least three persons in the electrical, plumbing and HVAC areas and the plans and specifications were available to the contractors. Some invited contractors came on site and also viewed plans. The Town did receive the quotes and accepted them as required by the statute. It is the Town's belief that it has substantially complied with these statutory provisions.

However, as referred in the previous section, the Town does not want to waste time and money in doing battle with SBA over these matters. The Town, despite the fact that it is going to potentially increase the costs and be of no benefit to the tax payers of the Town of Linden, intends to redo its invitation of quotes per I.C. § 36-1-12-4.7. The Town hopes to accomplish this task by the fall of 2007.

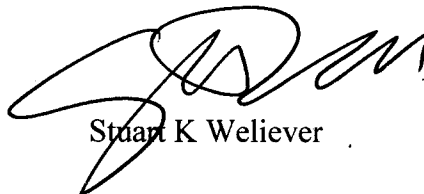
The Town believes that it is in compliance with the public works statutes and believes that the SBA opinions are erroneous. It is regretful that SBA, although not intended by it, is being used for political purposes by members of the public who are running for Town Board positions in November 2007. It is unfortunate that tax payers' money and resources are being used in such an overtly political way. The citizens of Linden deserve better than this misuse and mismanagement of public resources.

If you have any questions, or feel you need any additional information, do not hesitate to contact me.

With best regard, I remain

Very truly yours,

HENTHORN, HARRIS & WELIEVER



Stuart K Weliever

SKW:mkm  
Enclosures  
cc: Town of Linden

**MODIFICATION AGREEMENT**

The Town of Linden (hereinafter called "Buyer") and Jerrie Bruce d/b/a JB Rentals (hereinafter called "Seller") agree to modify that certain Installment Real Estate Contract between the parties dated April 12, 2007, a copy of which is attached hereto, as follows:

I. Paragraph four is hereby changed to read:

4. "Seller shall be responsible for property taxes on the real estate. Seller shall be responsible for all assessments for drainage or other public improvements payable after date of possession. The parties acknowledge that it is anticipated that the real estate shall not be subject to real estate taxation after the date of the contract once ownership is transferred to Buyer since Buyer is a political subdivision."

II. In addition to the terms of the original contract, Paragraph sixteen is added to the contract and reads as follows:

16. "Seller agrees that it shall maintain its roof and plumbing on the second story property located above the real estate purchased by Buyer. Seller shall maintain and repair its second story property in such a manner so as not to allow damages to occur to the real estate being purchased by Buyer.

III. The parties acknowledge that this amendment is subject to ratification by the Town Board of Linden.

In Witness whereof, the parties have executed this Modification Agreement on the \_\_\_\_ day of \_\_\_\_\_, 2007.

**SELLER:**

**BUYER:**

TOWN OF LINDEN, INDIANA

\_\_\_\_\_  
Jerrie Bruce, d/b/a JB Rentals

**BY:** \_\_\_\_\_

Gary Fike, President  
Town Board of Linden

36-1-12-4

**Procedure for projects in certain cities and towns**

Sec. 4. (a) This section applies whenever the cost of a public work project will be:

(1) at least seventy-five thousand dollars (\$75,000) in:

(A) a consolidated city or second class city;

(B) a county containing a consolidated city or second class city; or

(C) a regional water or sewage district established under IC 13-26; or

(2) at least fifty thousand dollars (\$50,000) in a political subdivision or an agency not described in subdivision (1).

(b) The board must comply with the following procedure:

(1) The board shall prepare general plans and specifications describing the kind of public work required, but shall avoid specifications which might unduly limit competition. If the

1. project involves the resurfacing (as defined by IC 8-14-2-1) of a road, street, or bridge, the specifications must show how the weight or volume of the materials will be accurately measured and verified.

(2) The board shall file the plans and specifications in a place reasonably accessible to the public, which shall be specified in the notice required by subdivision (3).

(3) Upon the filing of the plans and specifications, the board shall publish notice in accordance with IC 5-3-1 calling for sealed proposals for the public work needed.

(4) The notice must specify the place where the plans and specifications are on file and the date fixed for receiving bids.

(5) The period of time between the date of the first publication and the date of receiving bids shall be governed by the size of the contemplated project in the discretion of the board, but it may not be more than six (6) weeks.

(6) If the cost of a project is one hundred thousand dollars (\$100,000) or more, the board shall require the bidder to submit a financial statement, a statement of experience, a proposed plan or plans for performing the public work, and the equipment that the bidder has available for the performance of the public work. The statement shall be submitted on forms prescribed by the state board of accounts.

(7) The board may not require a bidder to submit a bid before the meeting at which bids are to be received. The meeting for receiving bids must be open to the public. All bids received shall be opened publicly and read aloud at the time and place designated and not before.

(8) Except as provided in subsection (c), the board shall:

(A) award the contract for public work or improvements to the lowest responsible and responsive bidder; or

(B) reject all bids submitted.

(9) If the board awards the contract to a bidder other than the lowest bidder, the board must state in the minutes or memoranda, at the time the award is made, the factors used to determine which bidder is the lowest responsible and responsive bidder and to justify the award. The board shall keep a copy of the minutes or memoranda available for public inspection.

(10) In determining whether a bidder is responsive, the board may consider the following factors:

- (A) Whether the bidder has submitted a bid or quote that conforms in all material respects to the specifications
  - (B) Whether the bidder has submitted a bid that complies specifically with the invitation to bid and the instructions to bidders.
  - (C) Whether the bidder has complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract.
- (11) In determining whether a bidder is a responsible bidder, the

board may consider the following factors:

- (A) The ability and capacity of the bidder to perform the work.
  - (B) The integrity, character, and reputation of the bidder.
  - (C) The competence and experience of the bidder.
- (12) The board shall require the bidder to submit an affidavit:
- (A) that the bidder has not entered into a combination or agreement:
    - (i) relative to the price to be bid by a person;
    - (ii) to prevent a person from bidding; or
    - (iii) to induce a person to refrain from bidding; and
  - (B) that the bidder's bid is made without reference to any other bid.

(c) Notwithstanding subsection (b)(8), a county may award sand, gravel, asphalt paving materials, or crushed stone contracts to more than one (1) responsible and responsive bidder if the specifications allow for bids to be based upon service to specific geographic areas and the contracts are awarded by geographic area. The geographic areas do not need to be described in the specifications.

*As added by Acts 1981, P.L.57, SEC.38. Amended by Acts 1981, P.L.56, SEC.4; P.L.329-1985, SEC.17; P.L.213-1986, SEC.4; P.L.252-1993, SEC.3; P.L.82-1995, SEC.15; P.L.22-2001, SEC.1; P.L.169-2006, SEC.48.*

#### **IC 36-1-12-4.7**

##### **Procedure for accepting quotes**

1.

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Sec. 4.7. (a) This section applies whenever a public work project is estimated to cost:

- (1) at least twenty-five thousand dollars (\$25,000) and less than one hundred thousand dollars (\$100,000) in:
    - (A) a consolidated city, second class city, or third class city with a population of fifteen thousand (15,000) or more;
    - (B) a county containing a consolidated city or second class city; or
    - (C) a regional water or sewage district established under IC 13-26; or
  - (2) at least twenty-five thousand dollars (\$25,000) and less than fifty thousand dollars (\$50,000) in a political subdivision or agency not described in subdivision (1).
- (b) The board must proceed under the following provisions:
- (1) The board shall invite quotes from at least three (3) persons known to deal in the class of work proposed to be done by mailing them a notice stating that plans and specifications are on file in a specified office. The notice must be mailed not less than seven (7) days before the time

fixed for receiving quotes.

(2) The board may not require a person to submit a quote before the meeting at which quotes are to be received. The meeting for receiving quotes must be open to the public. All quotes received shall be opened publicly and read aloud at the time and place designated and not before.

(3) The board shall award the contract for the public work to the lowest responsible and responsive quoter.

(4) The board may reject all quotes submitted.

*As added by P.L.82-1995, SEC.16. Amended by P.L.22-2001, SEC.2; P.L.1-2002, SEC.154; P.L.169-2006, SEC.49; P.L.195-2007, SEC.7.*

**IC 36-1-12**