

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

AUDIT REPORT

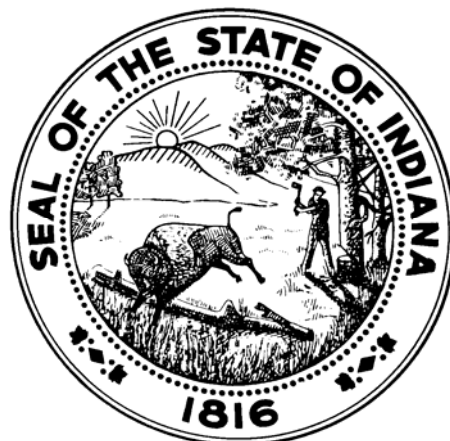
OF

CITY COURT

CITY OF ANDERSON

MADISON COUNTY, INDIANA

January 1, 2006 to December 31, 2006



**FILED**

09/05/2007



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CITY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Clerk	Sheila D. Ashley	01-01-04 to 12-31-07
Judge	Hon. Donald R. Phillippe	01-01-04 to 12-31-07
President of the Common Council	Rodney Chamberlain Donna Davis	01-01-06 to 12-31-06 01-01-07 to 12-31-07



**STATE OF INDIANA**  
AN EQUAL OPPORTUNITY EMPLOYER

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

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TO: THE OFFICIALS OF THE CITY OF ANDERSON

We have audited the records of the City Court for the period from January 1, 2006 to December 31, 2006, 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 Comprehensive Annual Financial Report of the City of Anderson for the year 2006.

STATE BOARD OF ACCOUNTS

June 11, 2007

CITY COURT  
CITY OF ANDERSON  
AUDIT RESULTS AND COMMENTS

OFFICIAL BOND

The official bond of the City Judge was not filed in the Office of the County Recorder.

Indiana Code 5-4-1-5.1(b) states in part: "Every elected or appointed officer, official, deputy, or employee of a political subdivision . . . shall file the bond in the office of the county recorder . . ."

PUBLIC DEFENDER FEES

The Anderson City Court currently assesses a Public Defender fee for some cases. Currently, the City Court Administrator is forwarding the Public Defender fee collections monthly to the City Controller and the fees are posted to the Court Supplemental Public Defender Fund. This money is not forwarded to the County's Public Defender Fund.

The home rule statute (Indiana Code 36-1-3-5(a)) prohibits a governmental unit from exercising powers that are expressly granted to another unit.

Indiana Code 33-40-3 authorizes a County to assess a Public Defender fee.

Indiana Code 33-40-3-1 states:

"A supplemental public defender services fund is established in each county. The fund consists of amounts deposited under section 9 of this chapter."

Indiana Code 33-40-3-5 states:

"A county may not have more than one (1) program providing court appointed legal services in the county, unless the fiscal body of the county agrees to allow additional court appointed legal services programs in the county."

CITY COURT  
CITY OF ANDERSON  
EXIT CONFERENCE

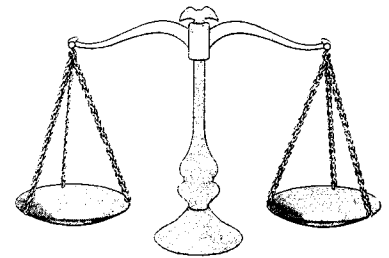
The contents of this report were discussed on June 25, 2007, with Hon. Donald R. Phillippe, Judge. The official response has been made a part of this report and may be found on pages 6 through 8.

**CITY OF ANDERSON**  
**OFFICE OF CITY JUDGE**

**JUDGE**  
**DONALD R. PHILLIPPE**

**P.O. Box 2100**  
**1034 Main Street**  
**Anderson, Indiana 46018**  
**Telephone 765.648.6090**  
**Facsimile 765.658.5909**

e-mail  
DPhillippe@cityofanderson.com



June 26, 2007

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

Dear Gentlepersons:

Re: Official Response - Exit Conference - Anderson City Court

I am in receipt of the State Board of Accounts Audit Results and Comments and met with your representative for an Exit Conference conducted on June 25, 2007. Two issues were raised, and I am responding as follows:

**1. Official Bond:**

“The official bond of the City Judge was not filed in the Office of the County Recorder.”

A copy of the bond and renewal notice therefor have been delivered to the City Clerk who will cause same to be spread of record in the Office of the County Recorder. I will cause same to so be done each year hereafter.

**2. Public Defender Fees:**

“The Anderson City Court currently assesses a Public Defender fee for some cases. Currently, the City Court Administrator is forwarding the Public Defender fee collections monthly to the City Controller and the fees are posted to the Court Supplemental Public Defender Fund. This money is not forwarded to the County’s Public Defender Fund.”

Firstly, please allow me to correct the record. The Court Administrator **DOES NOT** collect any monies. All fines, fees, costs, etc. are collected by the First Court Deputies acting on behalf of the City Clerk.

In response to the notion that Public Defender Fees should be forwarded to the County PD Fee Fund, my research shows the Anderson City Court is well within its purview to establish a Supplemental Public Defender Service Fund and retain/expend the funds derived therefrom for the benefit of the public defenders and those they represent. While I appreciate the statute cited by your field examiner, the law must be read *in pari materia*. Accompanying herewith you will find my research. As you can see, there is both case law and statute that grants the city courts authority to conduct the business in the same fashion as county courts, and I.C. 36-1-3-3(b) specifically sets forth, "Any doubt as to the existence of a power of a unit shall be resolved in favor of its existence."

I also call your attention to the Order of the Court establishing the PD Fee Fund and Administrative Fee fund (copy enclosed). That order was issued in 1992 at the behest of your office. At that time, it was determined the establishment of those non-reverting funds was entirely proper, but it was heartily recommended that an order issue.

Further, within the past year the State and Madison County established a Public Defenders Office. The city and town courts were not included in that, and we derive no benefit therefrom. The county pays none of our expenses nor does it offer counsel for indigent defendants. As a separate unit of government (and as if we are a county unto ourselves), our fund covers expenses for training, postage, supplies, costs of special public defenders, etc. The enclosed research clearly indicates the city and town courts are separate units and unattached to the counties. I refer you to the federal case enclosed: Cantrell v. Morris, Not Reported in F.Supp2d.

Thanking you for the opportunity to respond, I remain...

Respectfully yours,

  
Donald R. Phillippe, Judge  
Anderson City Court

DRP/jdt  
Enclosures

## **SCHEDULE OF ENCLOSURES**

City Court - City of Anderson - Audit Results and Comments  
June 19, 2007

I.C. 33-335-2-1 Judge of City or town court; powers and duties; special judge

I.C. 33-35-5-1 City Court; governing laws and rules

Order for Administrative Fee Fund  
Supplemental Public Defender Service Fund  
April 3, 1993

I.C. 36-1-3-4 Rule of law; powers of unit

I.C. 36-1-23-2 Policy

I.C. 36-1-3-3 Rule of law; resolution of doubt as to existence of power of a unit

Cantrell c. Morris, Not Reported in F.Supp.2d

466 N.E.2d 424, Sanders v. State, (Ind. 1984)

I.C. 33-40-3-10