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

AUDIT REPORT

OF

BOARD OF COUNTY COMMISSIONERS

PORTER COUNTY, INDIANA

January 1, 2007 to December 31, 2007

FILED
09/11/2008

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COUNTY OFFICIALS

Office	Official	Term
Auditor	James K. Kopp	01-01-07 to 12-31-10
Treasurer	James Murphy	01-01-06 to 12-31-09
President of the County Council	Daniel Whitten	01-01-07 to 12-31-07
	Robert Poparad	01-01-08 to 12-31-08
President of the Board of County Commissioners	Robert Harper	01-01-07 to 12-31-08

STATE OF INDIANA
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TO: THE OFFICIALS OF PORTER COUNTY

We have audited the records of the Board of County Commissioners for the period from January 1, 2007 to December 31, 2007, 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 Porter County for the year 2007.

STATE BOARD OF ACCOUNTS

July 14, 2008

FINANCIAL STATEMENT OPINION MODIFICATION - SALE OF COUNTY OWNED HOSPITAL

As stated in the prior report, on May 1, 2007, the County sold Porter Hospital (Hospital), a County owned hospital. At the closing, in addition to the sales price, several accounts held by Porter Hospital and the balances of those accounts were transferred to the County. The accounts included the operating, payroll, self-insurance and customer refund account, investment accounts, and other accounts in which funds were held in trust for the payment of existing hospital long-term debt.

A portion of the proceeds was transferred from the operating, payroll, self-insurance and customer refund accounts into a new County bank account. This account is used to provide funds for checks written by the Hospital prior to the date of sale, but which have not yet cleared the bank and to issue checks for goods and services incurred by the hospital prior to the date of the sale, but for which invoices had not yet been presented for payment. Furthermore, the money held in various trust accounts for the payment of long-term debt incurred by the Hospital will remain in those accounts until such time as the debt has been extinguished. Finally, the balance of funds held in the investment accounts and the remaining proceeds can be used by the County at the discretion of the county fiscal body after a five year period.

All of the Hospital funds were transferred to the County based upon closing documents on May 1, 2007; however, none of the money was receipted into County funds during 2007. In addition, the County paid invoices for goods and services provided prior to the closing date and for expenses incurred as a result of the sale of the Hospital; however, none of these transactions were recorded in the official records of the County. Furthermore, none of the disbursements were processed in accordance with claims procedures established by state statutes.

Based on a review of the bank activity from May 1, 2007 until December 31, 2007, of the County's hospital bank accounts, deposits totaled $180,669,785, withdrawals totaled $37,799,876 and the ending cash and investment balance as of December 31, 2007, was $142,869,809 was not recorded in the County's financial records for 2007. Therefore, the State Board of Accounts was unable to provide an unqualified opinion on the Independent Auditors' Report for the financial statements.

In December 2007, the County Commissioners approved three ordinances establishing funds for the proceeds from the sale of the Hospital which were not effective until January 1, 2008. The proceeds from the sale of the Hospital were posted to the County's fund ledger in February 2008.

Indiana Code 16-22-3-17(j) states:

"The proceeds of the sale or lease of all of the hospital buildings must first be applied to outstanding indebtedness attributable to the hospital buildings. The commissioners shall deposit the balance of the proceeds from the sale or lease and any property in the hospital fund in:

(1) a nonexpendable interest bearing trust fund from which claims are paid for county hospital claims for the indigent or any other fund that the county executive and county fiscal body designate; or

(2) the county general fund."

Indiana Code 36-2-10-16(a) states in part:

"Before the sixteenth day of each month, the treasurer shall prepare a report showing, as of the close of business on the last day of the preceding month, the following items . . .

(3) he totals of money received from all other sources and not receipted into the ledger fund accounts of the county at the end of the month.

(4) The total of the balances in all ledger fund accounts.

(5) The total amount of cash in each depository at the close of business on the last day of the month."

Indiana Code 36-2-6-2 states:

"A person who has a claim against a county shall file an invoice or a bill with the county auditor. The auditor shall present the invoice or bill to the executive, which shall examine the merits of the claim. The executive may allow any part of the claim that it finds to be valid."

Accounting records and other public records must be maintained in a manner that will support accurate financial statements. Anything other than an unqualified opinion on the Independent Auditors' Report on the financial statements may have adverse financial consequences with the possibility of an increase in interest rate cost to the taxpayers of the governmental unit. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

COUNTY ECONOMIC DEVELOPMENT INCOME TAX SUPPLEMENTAL DISTRIBUTION

Before October 2 of any year, the State of Indiana determines if the County is eligible for a supplemental distribution of county economic development income tax (CEDIT). Once the State of Indiana has determined a supplemental distribution may be made, the supplemental distribution must be made in January of the ensuing calendar year.

In January 2007 and 2008, the County received $4,722,300.87 and $3,747,783.95 of supplemental distributions of CEDIT from the State of Indiana. Of the totals received, the County receipted and distributed $2,749,652 and $2,182,220.78, respectively, to the County's 11 civil units of government as instructed by the State. The remaining balances of $1,972,648.87 and $1,565,563.17, respectively, were receipted to the County's CEDIT Unallocated Fund (308). However, based on the instructions received from the State and Indiana Code 6-3.5-7-17.3, the supplemental distributions are to be deposited to the Rainy Day Fund. As of June 2, 2008, the County has not established a Rainy Day Fund in which to account for any CEDIT supplemental distributions received.

Indiana Code 6-3.5-7-17.3(b) states: "A supplemental distribution described in subsection (a) must be: (1) made in January of the ensuing calendar year; and (2) allocated in the same manner as certified distributions for deposit in a civil unit's rainy day fund established under IC 36-1-8-5.1."

ANTABUSE COLLECTIONS BY ADULT PROBATION

As stated in the prior report, County Judges order individuals who have committed alcohol related offenses to undergo alcohol treatment. Individuals are ordered to be treated through an antabuse (anti-alcoholic) program. Individuals are required to go to the Health Department to have the drug administered on a weekly basis.

The ordinance or resolution approving the collection of fees for the antabuse program and for the establishment of the Antabuse Fund was not presented for audit. An antabuse fee of $70 per month is charged to those individuals in treatment. The fee was calculated by (1) the per person monthly cost of the drug plus (2) the cost of having a nurse from the Health Department administer the drug, and (3) the cost of having sheriff's personnel on hand to provide security and monitor adherence to the antabuse program. As of May 1, 2008, the fee was increased to $120 per month.

Fees should only be collected as specifically authorized by statute or properly authorized resolutions or ordinances, as applicable, which are not contrary to statutory or Constitutional provisions. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

INMATE PROCESSING FEE

As stated in the prior reports, on May 21, 2002, the Porter County Board of Commissioners established a $25 inmate processing fee. The inmate processing fee is charged to all individuals who are booked into the Porter County Jail (with the exception of state and federal prisoners temporarily housed at the Jail). If the individual has cash on his person at the time of booking, the cash is placed into an Inmate Trust Fund. The inmate's trust fund is then reduced by the $25 processing fee and the fee is remitted to the County Auditor's office for deposit into the Inmate Processing Fee Fund. If the individual does not have cash at the time of booking, the fee is charged to the inmate's trust fund and later collected when the inmate is bonded out of jail. If the inmate is released without paying the processing fee, he will be sent an invoice for this fee. Inmates who are later found not guilty and released from jail do not collect a refund of the inmate processing fee.

Disbursements made from the Inmate Trust Fund for the $25 inmate processing fee are inappropriate because the Inmate Trust Fund may only be used for the personal benefit of the inmate.

During 2007, the Sheriff's Department remitted $154,124.65 to the County's Inmate Processing Fee Fund (Fund 216). This processing fee was instituted in an attempt to generate additional revenue for police activity and to supplement the General Fund. Expenditures from the Inmate Processing Fee Fund bypass the appropriation process and the General Fund miscellaneous revenue may also be understated.

Indiana Code 36-1-3-8 states in part: "(a) Subject to subsection (b), a unit does not have the following: (8) The power to prescribe a penalty for conduct constituting a crime or infraction under statute."

The sheriff shall hold in trust separately for each inmate any money received from that inmate or from another person on behalf of that inmate. If the inmate or his legal guardian requests a disbursement from the inmate's trust fund, the sheriff may make a disbursement for the personal benefit of the inmate, including but not limited to a disbursement to the county jail commissary. (County Bulletin and Uniform Compliance Guidelines, April, 2001)

Fees should only be collected as specifically authorized by statute or properly authorized resolutions or ordinances, as applicable, which are not contrary to statutory or Constitutional provisions. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

ACCOUNTS PAYABLE VOUCHER REGISTERS

Accounts payable voucher (APV) registers are prepared for the Commissioners' certification before warrants are issued. However, the APV registers are not dated as to which public meeting the APV registers were approved. In a review of the Commissioners' minutes, the minutes do note the dates of the claims which are approved at a particular meeting. A comparison of the warrant dates from the APV registers to the claim dates noted in the Commissioners minutes indicated that not all APV registers are approved at a public meeting. The APV registers dated 4/23, 8/14, 8/22, 9/6, 10/4, 10/19, 10/26, and 12/19 were not noted as approved at a public meeting.

In addition, the County has approved ordinance 01-17 allowing claims payment in advance of Board allowance. A review of the accounts payable vouchers paid in advance of Commissioners approval indicated that not all accounts payable vouchers paid in advance were within the allowable categories set forth in ordinance 01-17.

Furthermore, the August 22 and October 19, 2007, accounts payable voucher registers were not presented for audit. In addition, the July 31, 2007, accounts payable voucher register totaling $1,064,337 was presented, however, neither the County Auditor nor the Commissioners certified the accounts payable vouchers for payment.

Indiana Code 36-2-6-4(b) states in part:

"Except as provided in section 4.5 of this chapter, the county executive may allow a claim or order the issuance of a county warrant for payment of a claim only at a regular or special meeting of the executive. The county auditor may issue a county warrant for payment of a claim against the county only if the executive or court orders him to do so."

Indiana Code 36-2-6-4.5 states:

"(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):

(1) Property or services purchased or leased from the United States government, its agencies, or its political subdivisions.

(2) License or permit fees.

(3) Insurance premiums.

(4) Utility payments or utility connection charges.

(5) General grant programs where advance funding is not prohibited and the contracting party posts sufficient security to cover the amount advanced.

(6) Grants of state funds authorized by statute.

(7) Maintenance or service agreements.

(8) Leases or rental agreements.

(9) Bond or coupon payments.

(10) Payroll.

(11) State or federal taxes.

(12) Expenses that must be paid because of emergency circumstances.

(13) Expenses described in an ordinance.

(14) Expenses incurred under a procurement contract under IC 31-25-2-17.

(c) Each payment of expenses under this section must be supported by a fully itemized invoice or bill and certification by the county auditor. (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."

BOARD OF COUNTY COMMISSIONERS
PORTER COUNTY
EXIT CONFERENCE

The contents of this report were discussed on July 22, 2008, with James K. Kopp, Auditor; and Robert Harper, President of the Board of County Commissioners. The official response has been made a part of this report and may be found on pages 10 through 13.

7-21-08

COUNTY of PORTER

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MEMO

TO: STATE BOARD OF ACCOUNTS

FROM: PORTER COUNTY BOARD OF COMMISSIONERS IN REPONSE TO AUDIT RESULTS AND COMMNETS

RE: CEDIT TAX – DEPOSIT RAINY DAY FUND

On March 31, 2003 the Porter County Council passed an ordinance imposing the County Economic Development Income Tax (CEDIT) in Porter County. The CEDIT tax is governed by IC 6-3.5-7 *et seq.* Pursuant to IC 6-3.5-7-5, the fiscal body is authorized to pass the tax.

Pursuant to Ordinance 03-03-02, the Porter County Council imposed the tax at a rate of twenty-five hundredths percent (0.25 %) on the county taxpayers effective July 1, 2003.

IC 6-3.5-7-15 requires the adoption of a comprehensive plan by the Porter County Board of Commissioners before the county may receive its certified distribution of CEDIT money. The Plan must specify the uses for which the county proposes to use the CEDIT revenues. Pursuant to IC 6-3.5-7.15, a failure by the county executive to adopt a plan results in the county not receiving its share of funds.

IC 6-3.5-7.10 provides that a special account within the state general fund SHALL be established for each county adopting the tax. It further provides:

> "Any revenue derived from the imposition of the CEDIT tax by a county SHALL be credited to that county's account in the state general fund."

Further, IC 6-3.5-7-13.1 provides that "the fiscal officer of each county, city, or town for a county in which the County Economic Development Tax is imposed SHALL establish an Economic Development Income Tax Fund. Except as provided in sections 23, 25, 26 and 27 of this chapter, the revenue received by a county, city, or town under this chapter SHALL be deposited in the unit's Economic Development Income Tax Fund."

Pursuant to state law, the Porter County Auditor's Office created a special account for deposit of CEDIT money. The money is appropriated by the Porter County Council pursuant to the comprehensive plan passed by the Porter County Board of Commissioners pursuant to IC 6-3.5-7-15. The Capital Improvement Plan must incorporate projects for which the costs are at least seventy-five percent of the unit's distribution share. The remainder of the funds are considered "unallocated CEDIT" funds. Unallocated CEDIT funds are governed by IC 6-3.5-7-10 and IC 6-3.5-7-13.1 and in compliance therewith are deposited into Fund 308 – Unallocated CEDIT.

IC 6-3.5-7-13.1 governs the appropriate use of CEDIT funds. IC 6-3.5-7-13.1 was amended effective July 1, 2005 through the addition of paragraph three which provides that CEDIT funds may be used "by a county, city, or town for any lawful purpose for which money in any of its other funds may be used." The intention of the statute was to generate funds to promote economic development.

CEDIT Funds must be:

(1) Deposited pursuant to IC 6-3.5-7-10 and IC 6-3.5-7-13.1;

(2) Appropriated by the fiscal body pursuant to the plan passed by the executive pursuant to IC 6-3.5-7-15; and

(3) Appropriated in compliance with IC 6-3.5-7-13.1.

The Porter County Council may not appropriate CEDIT money for expenditures unless the Porter County Board of Commissioners passes a Plan identifying those expenditures. The intention of the imposition of the tax was for the promotion of Economic Development Projects (see IC 6-3.5-7-13 (b) (1) and (b) (2).

On or about March 2, 2004 the Porter County Board of Commissioners passed Ordinance 04-04 and submitted therewith Exhibit A which was an Economic Development Income Tax Capital Improvement Plan of Porter County for 2004, 2005, 2006, and 2007.

On July 10, 2007 the Porter County Board of Commissioners passed Ordinance 07-11 which was an ordinance to adopt a Capital Improvement Plan pursuant to IC 6-3.5-7 for 2008, 2009, 2010, and 2011.

In January 2007 and January 2008 the county received $4,722,300.87 and $3,747,783.95 of CEDIT funds. Pursuant to IC 6-3.5-7.10 and IC 6-3.5-7-13.1, this CEDIT money was deposit in Fund 308 – Unallocated CEDIT.

The State Board of Accounts concludes that the CEDIT money received should be deposited in a Rainy Day Fund. The Porter County Board of Commissioners respectfully disagrees .

IC 36-1-8-5.1 governs "Rainy Day Funds." IC 35-1-8-5.8 provides that a political subdivision MAY (not shall) establish a Rainy Day Fund. The Porter County Board of Commissioners is the legislative body in Porter County and is the body responsible for passage of ordinances in the county. The Porter County Board of Commissioners has exercised their discretion not to create a "Rainy Day Fund" pursuant to IC 36-1-8-5.1.

IC 35-1-8-5.1 provides that the Porter County Board of Commissioners "may" establish a Rainy Day Fund and further provides that if they exercise their discretion to establish a Rainy Day Fund, they "must" specify the purposes of the fund and the sources of the funds, which may (not shall) include Supplemental Distributions to the county of CEDIT tax.

IC 36-1-8-5.1 (c) provides that the Rainy Day Fund is subject to the same appropriation process as other funds that receive tax money.

It is the position of the Porter County Board of Commissioners that the money received and referenced in the State Board of Accounts' audit has been property deposited into Fund 308 – Unallocated CEDIT for the following reasons:

(1) The money is CEDIT funds, and pursuant to IC 6-3.5-7-10 and IC 6-3.5-7-13.1, these funds SHALL (not may) be deposited into a special account generated within the general funds for those funds, and that includes Fund 308 – Unallocated CEDIT;

(2) IC 36-1-8-5.1 provides that the creation of a Rainy Day Fund is discretionary. The decision to pass a Rainy Day Fund; the decision to identify the purpose of the Rainy Day Fund; and the decision to identify the source of the Rainy Day Fund is up to the Porter County Board of Commissioners. The Porter County Board of Commissioners has decided NOT to create a Rainy Day Fund. Therefore, the CEDIT money must be deposited in Fund 308 – Unallocated CEDIT;

(3) Deposit of the CEDIT money into a Rainy Day Fund violates IC 6-3.5-7-15 which requires that CEDIT funds be appropriated pursuant to a Capital Improvement Plan passed by the Porter County Board of Commissioners.

(4) The CEDIT money referenced is not a Supplemental Distribution as that term is defined in IC 6-3.5-7-17.3.

Based on the foregoing, the Porter County Board of Commissioners respectfully disagrees with the State Board of Accounts' position.

Respectfully submitted,

Gwenn R Rinkenberger

Gwenn R. Rinkenberger
County Attorney

GRR/dt

cc: Commissioner Robert P. Harper
Commissioner John A. Evans
Commissioner Carole M. Knoblock
Jim Kopp, Porter County Auditor
Melissa Hartig, Administrative Assistant