

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

AUDIT REPORT

OF

PROSECUTING ATTORNEY

DUBOIS COUNTY, INDIANA

January 1, 2009 to December 31, 2009



**FILED**

01/03/2011



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COUNTY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Prosecuting Attorney	Michael Fritch	01-01-07 to 12-31-10
President of the County Council	Gregory A. Kendall	01-01-10 to 12-31-10
President of the Board of County Commissioners	Randall L. Fleck	01-01-10 to 12-31-10



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TO: THE OFFICIALS OF DUBOIS COUNTY

We have audited the records of the Prosecuting Attorney for the period from January 1, 2009 to December 31, 2009, 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 Result and Comment. The financial transactions of this office are reflected in the Annual Report of Dubois County for the year 2010.

STATE BOARD OF ACCOUNTS

December 22, 2010

PROSECUTING ATTORNEY  
DUBOIS COUNTY  
AUDIT RESULT AND COMMENT

TIMEKEEPING AND LEAVE TIME POLICIES

Background Information

The office of prosecuting attorney was created by the judicial article of the Indiana Constitution of 1851, IND. CONST. Art. 7, Sec. 16. Prosecuting attorneys are elected for each judicial circuit of the state, and prosecuting attorneys and deputy prosecuting attorneys are state officers, 2001 OAG No. 11, 2002 OAG No. 4. Dubois County constitutes the 57<sup>th</sup> judicial circuit, IC 33-33-9-3. The prosecutor of a judicial circuit in Indiana must conduct all prosecutions for felonies, misdemeanors, and infractions and perform all other duties required by law, IC 33-39-1-5. The prosecuting attorney must follow all state laws and the UCGs, such as the "Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana" developed by the SBoA.

In general a prosecuting attorney may appoint one chief deputy prosecuting attorney, IC 33-39-6-2(a). Other deputy prosecuting attorneys may also be appointed, IC 33-39-6-1(a), IC 33-39-6-2(g). The salary of the prosecuting attorney is established by the legislature, IC 33-39-6-5, as is the salary of a chief deputy prosecutor, IC 33-39-6-2. The prosecuting attorney is paid by the state from the state general fund, IC 33-39-6-5(d). The chief deputy prosecuting attorney is also paid by the state, IC 33-39-6-2(a), -2(f). The compensation of other deputy prosecuting attorneys, investigators, and the clerical staff are paid from county funds, IC 33-39-6-2(g), IC 33-39-4-1(c). The prosecuting attorney sets the compensation of the deputy prosecuting attorneys, 2002 OAG No. 4, but the county council and the prosecuting attorney set the compensation of the investigator, IC 33-39-4-1(c). The prosecuting attorney and chief deputy prosecuting attorney may be paid additional amounts by the county, IC 33-39-6-2(f), IC 33-39-6-1(b).

The prosecuting attorney operates his office independently of the county, and the county exercises no discretion or control over the prosecuting attorney beyond determining the level of funding that is necessary for the office, 2001 OAG No. 11, 2002 OAG No. 4.

Condition

After reviewing the time and attendance records for deputy prosecuting attorneys ("attorneys") and other employees of the Dubois County prosecuting attorney's office, we identified at least three time records were created and maintained in the office of the Dubois County prosecutor. There was a computerized time clock system that generated a time card report, until the attorneys stopped using this system; an interoffice log of hours entered by hand and the payroll schedule and voucher form for submitting payroll to the county auditor. Additionally, each attorney and other employees maintained records of leave time on the employee service record form prescribed by the SBoA. Our comparison of these records did not reveal variances between these documents. However, we noted inconsistencies in what the employees and attorneys within the office believed to be the policies over work hours and accruing and using leave time. We interviewed the prosecuting attorney regarding his understanding of these policies with the following results.

Prosecuting Attorney Michael Fritch stated that the personnel policies written in the Dubois County Employee and Procedure Handbook adopted February 23, 1998, were in place during 2007 through 2009 for all staff members. ". . . The deputy prosecutors in the office are not county employees, per se, as they represent the 57<sup>th</sup> Judicial Circuit. Nevertheless, we followed the personnel policies as outlined in the handbook. However, issues concerning working hours, vacation, time off, etc. for the attorneys were different because of their professional, salaried positions and duties. . . ."

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When asked about timekeeping, Mr. Fritch indicated that all staff members were to follow the timekeeping policies within the county handbook. He also stated in part: ". . . As noted above, issues concerning working hours, vacation, time off, etc. for the attorneys were different because of their professional, salaried positions and duties. Chief Deputy Deborah Dysert, Deputy Kurt Leinenbach, and Deputy Christine St. John – the three other prosecuting attorneys, had a more informal timekeeping policy because of their work demands outside regular business hours. Let me give an example in an attempt to describe this relationship: Most recently, when both Kurt Leinenbach and Christine St. John were hired (Kurt – 01-01-07, Christine – 08-01-07), I went to the Commissioners each time, as I was told I was required to do, to receive their approval to hire. Included in this request, I argued that it was not appropriate to treat deputy prosecutors the same as other employees as it came to vacation, time off, etc. (especially the first two years of employment because of the vacation restriction) as they were professional attorneys representing the State of Indiana as my deputies, and their work requirements were very different from other staff members. (To my knowledge, outside the part-time county attorney, there was no other county employee with similar issues to compare.) This issue was vigorously argued by me because the County Handbook did not allow any vacation time the first year of employment and only one week the second year, and I was trying to attract and hire attorneys as deputy prosecutors (who are judicial officers to represent the State in criminal cases) with proven years of legal experience! So, each time, I left the Commissioners meeting with both parties disagreeing on the accurate status of a deputy prosecutor and the policy regarding vacation, time off, etc. (ie – county employee vs. state/professional employee), although the Commissioners responded that they should be treated as first year hires like everyone else. Nevertheless, I treated all of my deputies (including Ms. Dysert) the same in that the guidelines of the County Handbook were to be followed in general, but that working hours, vacation, or time off would be flexible, regardless of the Commissioners policy. This was expressed verbally to each of the attorneys. After the first two years, vacation would be at least two weeks per the Handbook, and we never discussed it much after that. I do remember having conversations with Ms. Dysert, after she was employed for a number of years (I believe about six or seven, but that's a guess), that she would receive three weeks (15 days) of vacation, plus sick days (6) and 3 personal days. . . ."

Examination of the minutes of the meetings for the Dubois County Board of County Commissioners confirmed that the Prosecutor did request two weeks paid vacation leave for a deputy prosecutor that was to be hired at the December 18, 2006, meeting. The minutes contain the following: This statement is struck out with an ink drawn line and initialed by JB, RLF, and LV. Subsequent discussion is noted in the January 8, 2007, minutes of the Dubois County Commissioners regular meeting without comment as to approval or denial. The minutes of the meeting for July and August 2007, did not include that minutes requesting that the Prosecutor address the Dubois County Commissioners requesting leave time for another newly hired deputy prosecutor.

We also reviewed Prosecutor Fritch's letter faxed on March 12, 2010, responding to questions about paid leave time to Ms. Mroz, who represent former chief deputy prosecutor, Deborah Dysert. In the letter Mr. Fritch states: ". . . It has been my practice to utilize the benefit policies set out in the Dubois County Employee Handbook just as Ms. Dysert had done in previous years. . . . I continue to use the County's policies for benefit time." In reference to the former chief deputy's accrued leave time.

The attorneys and other prosecutor's office employees were also interviewed by questionnaire regarding timekeeping and leave time policies. We asked the following questions and received the answers stated below from the 3 attorneys working for the Prosecuting Attorney.

Question: What was your work schedule?

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AUDIT RESULT AND COMMENT  
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Responses:

Former Chief Deputy Prosecuting Attorney: "Office hours 8:00 a.m. to 4:00 p.m., As Chief Deputy Prosecutor, I worked many more hours than the set office hours . . ."

Deputy Prosecuting Attorney: "Regular office hours are 8:00 a.m. to 4:00 p.m., Monday through Friday. Irregular hours are often necessary, and I can be called at any time, day or night, to assist police officers in investigations. I am required to work as much as needed in order to fulfill my job duties and responsibilities according to my oath as a deputy prosecuting attorney . . ."

Former Deputy Prosecuting Attorney/Office Manager: "I was told by Mike Fritch that the office hours, and my hours were 8 am to 4 pm with 1 hour for lunch. But that obviously there would be times that I would need to work otherwise because of Court or workload."

Question: Were you required to record the time that you were working for the Prosecutor? If so, how was such time recorded?

Responses:

Former Chief Deputy Prosecuting Attorney: "When I was appointed by Mike Fritch in January 1999, I was told by Mike Fritch that as Chief Deputy Prosecutor I was employed by the State of Indiana, even though I received a stipend from the county. In 1999, Mike Fritch told me that I did not have set hours or vacation, but that I had to work at least one day in the year to receive my salary, as he claimed he did, to receive his state salary . . ."

Deputy Prosecuting Attorney: "I was not required to keep exact hours of my time. I was handed a sheet with areas for 'Days Worked,' 'Personal Days,' 'Sick Days,' and 'Vacation Days,' without exact instruction as to how to handle irregular hours. I often worked more than the 35 hours the office was open but yet put down that I had missed. This happened when I worked excessive irregular hours, but missed time when the office was open. I don't know if this was the correct way to track my time off or not . . ."

Former Deputy Prosecuting Attorney/Office Manager: "Yes, I had to log in under my passcode #12 (which was accessible to everyone) on the computer time clock, since they were numbered 1,2,3,4, etc. and keep track of my time, then log out at 4 or whenever. Also, for payroll, there were these inter office time sheets . . . put on our desk each pay period so that we would mark down the "days" that we were there, or time off taken. At one point it was even broken down into hours, I think."

Question: If you provided services for the Prosecutor in addition to the regular work day (or work schedule), was the time spent providing such services required to be recorded? If so, how was such time to be recorded?

Responses:

Former Chief Deputy Prosecuting Attorney: "I kept some records on my own of the services I provided for the Prosecutor's Office in addition to the regular work day."

Deputy Prosecuting Attorney: "Irregular hours were not required to be recorded, nor was I told that there was a place for them to be recorded. As such, those hours were not recorded."



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Former Deputy Prosecuting Attorney/Office Manager: "Yes. The time clock would normally record it. I didn't get to put the extra time on the inter-office ledger though because I was told that we didn't get comp time."

Question: Was there a policy or process for notifying the Prosecutor of your desire to take time off of work during 2007, 2008 and 2009? If so, was the request to be recorded?

Responses:

Former Chief Deputy Prosecuting Attorney: "Yes, if an employee wanted to take time off they were to notify Mike Fritch, Christine St. John (after she became office manager) or myself of the days they wanted off. The requests were to be reviewed case by case and approved if the office had sufficient coverage for the office and court. Requests were usually made in writing."

Deputy Prosecuting Attorney: "I told Mike Fritch when I needed time off, and I asked if it was okay. If I was sick, I called in to tell Mike, or for a staff person to tell Mike. Such requests were not recorded. They were in-person requests or phone calls."

Former Deputy Prosecuting Attorney/Office Manager: "Yes. I was to let Mike know the time I needed, but more importantly the days so that he would check with everyone to see if it worked and the office wouldn't be short staffed, and I let Debbie know. Usually, I checked the Court docket first so that Mike knew I wasn't leaving the office short handed. I believe that I usually wrote Mike a note and when I gave it to him or asked him for vacation, he would pull out his calendar and mark it down."

Question: Was time taken off work (Leave Time) recorded for timekeeping purposes? If so, how was it recorded?

Responses:

Former Chief Deputy Prosecuting Attorney: "Leave time was to be recorded in writing by the employees and available for review upon request. We used an honor system and then used the time clock after December 2005 for such recording purposes. . . ."

Deputy Prosecuting Attorney: "I assume so. I was not required to keep exact hours of my time. I was handed a sheet with areas for 'Days Worked,' 'Personal Days,' 'Sick Days,' and 'Vacation Days,' without exact instruction as to how to handle irregular hours. I don't know how these numbers were recorded after that sheet left my hand. The Dubois County Policy Manual was given to me, but it is ambiguous as to how I should report my actual hours worked, how I fit into its scheme, and whether I apply to its policies, and therefore it's ambiguous as to how to correctly report Leave Time. I know I was not consistent in doing so, but I was never told this was a problem. Any inconsistency in reporting Leave Time was due to the great number of irregular hours I have worked, as well as the ambiguity as to how I was supposed to record irregular and regular hours."

Former Deputy Prosecuting Attorney/Office Manager: "Yes. The time clock would not be entered, and then the inter office ledger would require that your time be broken down into time worked, time off personal, time off vacation, time off sick, and there might have been an 'other' at one time."

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Documentation reviewed including the interviews done by questionnaire showed that the other employees of the Prosecuting Attorney's Office generally agreed that the county's personnel policies over timekeeping, working hours, and leave time applied to their positions. We noted no noncompliance with the Dubois County Personnel Policy by these employees during our examination.

Our examination did not identify a single policy for paid leave time or recordkeeping to be followed by the chief deputy prosecutor and deputy prosecutors. The office does not have a clearly defined written policy on timekeeping and leave time for deputy prosecutors. The adequacy of timekeeping records and the allowability of paid leave time taken for the chief deputy prosecuting attorney and deputy prosecuting attorneys could not be determined because it is unclear what policies, if any, apply to these positions. The Dubois County Prosecutor stated at the exit conference that a verbal policy was in effect, but no written policy was established.

Each governmental unit should adopt a written policy regarding the accrual and use of leave time and compensatory time and the payment of overtime. Negotiated labor contracts approved by the governing board would be considered as written policy. The policy should conform to the requirements of all state and federal regulatory agencies. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 5)

PROSECUTING ATTORNEY  
DUBOIS COUNTY  
EXIT CONFERENCE

The contents of this report were discussed on December 22, 2010, with Michael Fritch, Dubois County Prosecuting Attorney.