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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

LAKE COUNTY, INDIANA

January 1, 2011 to December 31, 2011

FILED

09/21/2012

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COUNTY OFFICIALS

Office	Official	Term
Auditor	Peggy Holinga Katona	01-01-07 to 12-31-14
Treasurer	John E. Petalas	01-01-07 to 12-31-14
President of the County Council	Ted Bilski	01-01-11 to 12-31-12
	Jerome A. Prince	01-01-12 to 12-31-12
President of the Board of County Commissioners	Roosevelt Allen Jr.	01-01-11 to 12-31-11
	Gerry J. Scheub	01-01-12 to 12-31-12

STATE OF INDIANA
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TO: THE OFFICIALS OF LAKE COUNTY

We have audited the records of the Board of County Commissioners for the period from January 1, 2011 to December 31, 2011, 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 Lake County for the year 2011.

STATE BOARD OF ACCOUNTS

August 15, 2012

COMMISSIONER TAX SALE DISTRIBUTION

Proceeds from the sale of property at the Commissioner's Tax Sale, were recorded in the Commissioner's Tax Sale Fund (385). The expenses related to the Commissioners' Tax Sale, i.e., professional services, advertising, appraisals, redemption of property, and any other related expenses were paid from this fund. In addition to the expenses paid from this fund, the County Auditor transferred funds from the Commissioner Tax Sale Fund (385) to various incentive funds during 2011 as follows:

Auditor's Incentive Fund	$ 236,000
Commissioner's Incentive Fund	250,000
Recorder's Incentive Fund	100,000
Treasurer's Incentive Fund	240,000

According to Indiana Code Indiana Code 6-1.1-25-9, identified costs relating to the tax sale can be paid from the proceeds from the sale of property. Ordinance 1333A established amounts to be transferred to the Incentive Funds from the Commissioner Tax Sale Fund. The Incentive Funds were established to cover payroll costs associated with the commissioner tax sale. After the tax sale expenses paid from the Commissioner Tax Sale Fund, the County Auditor transferred a portion of the surplus to the Incentive funds. The County Auditor did not distribute any of the remaining money to the appropriate taxing units. The balances of the Commissioner Tax Sale Fund and the Incentive Funds as of December 31, 2011, are as follows:

Fund	Amount
Commissioner Tax Sale (385)	$ 2,628,681.77
Auditor's Incentive (193)	391,336.25
Commissioner's Incentive (242)	256,161.46
Recorder's Incentive (260)	275,766.73
Treasurer's Incentive (427)	333,172.97

In 2012, funds were transferred from the Commissioner Tax Sale Fund to the General Fund totaling $2,049,593. The reason for the transfer was so the County could pay for the 27th payroll expense that was going to occur in 2012 but the County failed to include in the budget. We informed the County Auditor and the County Attorney that we could not find any statutory authority for the County to make such a transfer. The funds were returned to the Commissioner Tax Sale Fund. We advised officials to distribute the appropriate amount to taxing units as required by statute.

The County Attorney determined that additional expenses of an estimated 3 percent of the total revenue collected ($10,380,458.97) or $311,413.77 were incurred during the period of 2009 through 2012 and the County was entitled to be reimbursed those expenses. On July 17, 2012, the County transferred $311,413.77 to the Collection Expense Reimbursement fund (386).

Indiana Code 6-1.1-25-9, Sale of property acquired by county; application of proceeds; report; actions by county executive, states in part:

> "(a) When a county acquires title to real property under IC 6-1.1-24 and this chapter, the county executive may dispose of the real property under IC 36-1-11 or subsection (e). The proceeds of any sale under IC 36-1-11 shall be applied as follows:

(1) First, to the cost of the sale or offering for sale of the real property, including the cost of:

(A) maintenance;

(B) preservation;

(C) administration of the property before the sale or offering for sale of the property;

(D) unpaid costs of the sale or offering for sale of the property;

(E) preparation of the property for sale;

(F) advertising; and

(G) appraisal.

(2) Second, to any unrecovered cost of the sale or offering for sale of other real property in the same taxing district acquired by the county under IC 6-1.1-24 and this chapter, including the cost of:

(A) maintenance;

(B) preservation;

(C) administration of the property before the sale or offering for sale of the property;

(D) unpaid costs of the sale or offering for sale of the property;

(E) preparation of the property for sale;

(F) advertising; and

(G) appraisal.

(3) Third, to the payment of the taxes on the real property that were removed from the tax duplicate under section 4(c) of this chapter.

(4) Fourth, any surplus remaining into the county general fund. . . ."

DELINQUENT COLLECTION FEES FUND

In 2002, the County Commissioners' entered into a contract with Tax Management Associates (TMA) to identify undervalued or omitted personal property not properly recorded in the County's tax system. Once identified by TMA, the County pursued collection of the delinquent taxes through outside attorneys. When collection from these properties occurred, the delinquent tax and the attorney fees paid by the property owner were receipted into the Delinquent Collection Fees Fund (235). TMA and the outside attorneys were paid from this fund with the remaining balance as of July 17, 2012, totaling $2,783,808.52 that should be available for distribution to the appropriate taxing districts.

The County Attorney determined that additional expenses of an estimated 20 percent of the total revenue collected ($6,313.080.46) or $1,262,616.09 were incurred over several years and that the County was entitled to be reimbursed those expenses. On July 17, 2012, the County Auditor on the advice of the County Attorney transferred $1,262,616.09 to the Collection Expense Reimbursement Fund (386) and the remaining $1,521,192.43 was transferred into the Undervalued and Omitted Property Fund (a new fund established by Ordinance 1350A).

We could not determine that the 20 percent expenses above totaling $1,262,616.09 were allowed to be transferred. Additionally, officials have not documented these expenses over the years, therefore, we could not determine if the estimated amount was accurate and reasonable. According to the statute cited below, the County Auditor is obligated to distribute the entire balance of $2,783,808.52 to the appropriate taxing districts.

Indiana Code 6-1.1-23-7, Collection expenses; payment; fees; disposition, states:

"(a) With respect to the collection of delinquent personal property taxes, the county treasurer shall charge the following collection expenses to each delinquent taxpayer:

(1) For making a demand by:

(A) registered or certified mail, eight dollars ($8); or

(B) any other manner permitted by section 1 of this chapter, five dollars ($5).

(2) For making a levy, ten dollars ($10).

(3) For selling personal property, ten percent (10%) of the sale price.

(4) For advertising a sale, the legal rates for advertising.

(5) For transfer and storage of personal property, the actual expense incurred.

(6) Other reasonable expenses of collection, including:

(A) title search expenses;

(B) uniform commercial code search expenses; and

(C) reasonable attorney's fees or court costs incurred:

(i) in the collection process;

(ii) due to a court order; or

(iii) due to an order of the treasurer; under IC 6-1.1-23-10.

(b) The fees collected under this section are the property of the county and shall be deposited in the county general fund. The collection expenses incurred in connection with the levy upon and sale of personal property shall be paid from the county general fund without prior appropriation."

Indiana Code 6-1.1-36-12, Contracts for discovery of omitted property; fund for additional receipts; use of fund, states:

> (a) A board of county commissioners, a county assessor, or a township assessor (if any) may enter into a contract for the discovery of property that has been undervalued or omitted from assessment. The contract must prohibit payment to the contractor for discovery of undervaluation or omission with respect to a parcel or personal property return before all appeals of the assessment of the parcel or the assessment under the return have been finalized. The contract may require the contractor to:
>
> (1) examine and verify the accuracy of personal property returns filed by taxpayers with the county assessor or a township assessor of a township in the county; and
>
> (2) compare a return with the books of the taxpayer and with personal property owned, held, possessed, controlled, or occupied by the taxpayer.
>
> (b) This subsection applies if funds are not appropriated for payment of services performed under a contract described in subsection (a). The county auditor may create a special non-reverting fund in which the county treasurer shall deposit the amount of taxes, including penalties and interest, that result from additional assessments on undervalued or omitted property collected from all taxing jurisdictions in the county after deducting the amount of any property tax credits that reduce the owner's property tax liability for the undervalued or omitted property. The fund remains in existence during the term of the contract. Distributions shall be made from the fund without appropriation only for the following purposes:
>
> (1) All contract fees and other costs related to the contract.
>
> (2) After the payments required by subdivision (1) have been made and the contract has expired, the county auditor shall distribute all money remaining in the fund to the appropriate taxing units in the county using the property tax rates of each taxing unit in effect at the time of the distribution.
>
> (c) A board of county commissioners, a county assessor, or a township assessor may not contract for services under subsection (a) on a percentage basis."

COLLECTION EXPENSES WITHHELD FROM SETTLEMENT DISTRIBUTION

The County Auditor distributed property tax collections in June, 2012. Litigation expenses associated with two large property tax cases were withheld from the June 2012 settlement involving the following taxing units:

Taxing Unit	Amount
Calumet	$ 889,138.27
Hammond	22,541.65
East Chicago	130,490.68
Whiting	161,232.20

The County attorney directed the County Auditor to deduct these amounts from the tax settlement of the units described above and credit them to the County's Collection Expense Reimbursement Fund.

We are unaware of any statutory authority to withhold these amounts from these respective taxing units.

The county auditor is authorized to make distributions of funds due the State of Indiana and local governmental units within the county without allowance or approval of the board of county commissioners. Distributions of property taxes, bank, building and loan taxes, license excise taxes and any other distribution which includes two (2) or more funds or sources shall be accompanied by a Certificate of Tax Distribution, Form 22 (Rev. 1985). If a distribution (other than property tax settlement) includes only one fund or source and the fund or source is shown on the warrant, it is not necessary to furnish a certificate of tax distribution.

Warrants for all distributions should be made payable to the fiscal officer or treasurer of the governmental unit by title, for example: Trustee, Washington Township; Clerk-Treasurer, Town of Rockville, Treasurer, North Putnam Community School Corporation. The personal name of a public official should not be shown on any warrant payable to a state agency or local governmental unit. (Accounting and Uniform Compliance Guidelines Manual for County Auditors of Indiana, Chapter 7)

DORMANT FUNDS

The County is reporting cash balances for several funds that have had no activity for three years. These funds and their corresponding balances as of December 31, 2011, are Economic Development FMHA, $45,238; Environmental Task Force, $36,402; and US Research Consultant, $3,473.

Most counties have funds that have been inactive or dormant for a number of years. A sufficient fund balance should be retained to pay any outstanding obligations, such as bonds and interest coupons not surrendered for payment. However, to the extent of any balance not needed to cover outstanding obligations, every effort should be made by county auditors to eliminate such funds from the records. The following statutory authorities will be found governing the closing out of the above listed funds.

Indiana Code 5-1-13-2 provides that when bonds have been issued for any lawful purpose, and the purpose for which the debt was incurred has been accomplished or abandoned, the surplus or balance in such bond fund shall be transferred to the bond and interest redemption fund by the disbursing officer upon order of the legislative body. The funds so transferred are to be used for the payment of interest bearing indebtedness.

Indiana Code 36-1-8-5 is a general law which provides that unused and unencumbered balances in county funds which have been raised by levy on all of the taxable property of the county be transferred to the county general fund or rainy day fund, upon authority given by the county council. This section also provides that unused and unencumbered balances in funds for the redemption of poor relief bonds or like obligations for poor relief purposes by levy on all of the taxable property of a civil township be transferred to the poor relief fund of such township.

County auditors should examine any dormant funds carried on their ledgers with the view toward closing out such funds before December 31. (The County Bulletin and Uniform Compliance Guidelines, Vol. No. 353, October 2005)

BOARD OF COUNTY COMMISSIONERS
LAKE COUNTY
EXIT CONFERENCE

The contents of this report were discussed on August 15, 2012, with Gerry J. Scheub, President of the Board of County Commissioners; Peggy Holinga Katona, Auditor; and John Dull, Attorney for 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.

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August 16, 2012

Bruce Hartman
State Examiner
State Board of Accounts
302 W. Washington, 4th Floor-Rm. 418
Indianapolis, IN 46402

RE -- Audit Comments
2011 Audit of County Commissioners, County Council, County Auditor

Dear Mr. Hartman:

These comments are submitted in regard to the following sections in the audit comments prepared by the State Board of Accounts. The following four (4) comments are submitted on behalf of the Board of Commissioners, County Council, Auditor, Treasurer and Lake County, Indiana.

1. Commissioner Tax Sale Distribution

   The money in this Fund 385 is from the sale of Commissioner Tax Sale Certificates. These sales were initiated as a result of a law passed in 2003. As Public Law 170-2003 and codified as IC 6-1.1-24-6.1. The County Council has since that time enacted ordinances giving money from that fund to the Auditor, Treasurer, Recorder and Commissioners for the services they provide to the fund. However, no allowance was ever made for the expenses of the County Attorney's office.

The sales have occurred for 11 years and the money in the fund net of the distribution as incentive payments should have been distributed to the units of government but never was. This year the money will be distributed, but it was necessary to reimburse the County Attorney's office for its expenses. The County Attorney is involved in two ways with the sale. First and foremost is the involvement with the Treasurer's tax sale from which if there is no bid on the property the Commissioners receive a tax sale certificate. Second, the tax sale certificates are sold at a separate auction. The involvement in these two areas consumes approximately 20 percent of the time of the County Attorney and his secretary on an annual basis. This percentage varies by week but bulks large just before a Treasurer's tax sale and a Commissioner certificate sale. Then, there are the inumerable questions after each sale from buyers and elected officials.

The number of 3 percent was arrived at by costing out the actual salaries, retirement payments, social security payments, workman's comp/unemployment compensation, and health benefit costs for the two aforementioned positions. The cost averages about $27,000.00 per year to which was added $1,310.00 to cover the estimated cost of supplies, telephone and similar items. The total is $28,310.00 which over 11 years amounts to 3 percent of the total revenue of $10,380,458.97 collected as identified in the audit report.

2. Delinquent Collection Fees Fund

Lake County contracted with TMA in 2002 for personal property audits to identify undervalued or omitted personal property. TMA only made the valuation determination. The County itself had to do the collections.

After paying TMA, the balance in the fund was almost $2.8 million. The program activity extended over 10 years from 2002 into 2011. The monies in the fund should have been distributed to the units net of expenses during the period of time that it was collected. The County made a decision to distribute the money in 2012.

Starting in 2002, one person in the Assessor's office worked with personal property audits entirely. This person devoted 100 percent of their time to TMA and personal property. In addition, the County Attorney's office spent approximately 10 percent of the time of the County Attorney and its secretary on this collection effort. This TMA program was one of the major programs instituted by the previous Assessor who devoted a very significant amount of time to this project over the period 2002-2009. In addition, the office manager of the former and current Assessor over an 11 year period was actively involved in the collection. Since the new Assessor took office in 2010, his chief deputy has been actively involved in this program. At the Treasurer's Office, one employee devoted a very significant amount of time over the 10 year period to identify and recording the monies received and then paid out. Lastly, the Lake County Auditor recorded the transactions.

The reason for the substantial size of the estimate is that in addition to the actual salaries, county's social security contributions, retirement contributions, and unemployment contributions on an actual basis, there was a substantial amount of money paid out for and on behalf of one or more of the people involved as health care benefits. Thus, the size of the estimate reflects actual health costs on behalf of at least one (1) employee and these costs have been validated. Due to HIPPA confidentiality restrictions, those costs cannot be revealed in this response. For that reason they are noted, but no documentation is provided. If the State Board of Accounts and State Examiner would like to review the documentation without the County identifying the employee, that may be possible.

3. Collection Expenses Withheld from Settlement Distribution

At the June, 2012 settlement monies were withheld from Calumet Township and the cities of Hammond, East Chicago, and Whiting based upon the direction of the County Attorney. The Assessor's office has to defend assessment appeals for property tax cases. These decisions originate with local assessors and date back to at least 2004 and the recent cases filed by Majestic Star in Calumet Township and BP in North Township. The county out of its self insurance liability fund incurred substantial expense in their defense. In the case of Majestic Star, that included monies paid to a major out of state firm to defend the cases along with substantial payments to local counsel who is not an employee. The same two parties along with appraisers and experts were involved in the defense of various proceedings involving the two companies. The monies the County Attorney directed to be withheld represent the litigation expenses that were not reimbursed in any fashion by either BP or Majestic Star.

In IC 36-1-4-17 a unit has the authority to collect any money owed to the unit and to compromise the amount of money due the unit. The defense of assessment reductions is the reverse side of collecting money. Since a successful defense will yield a greater tax bill owed by the property owner under IC 36-1-4-17 a unit can determine the costs of its action and seek collection. In this case, there is a negative collection in that the costs are incurred on behalf of units other than the county. The only statutory way to recoup the money spent in defense of these appeals is to withhold it from the unit. This is analogous to the situation where the county makes a tax refund and then charges the unit its pro rata share of that refund. In the instance of the withholding from the June, 2012 settlement distribution the pro rata share of the bills was withheld from the appropriate units.

4. Dormant Accounts

The County should cancel out the funds and distribute the monies in dormant to either the named fund recipient or the grantor of the funds. In the current audit, there are three that had no activity in three years and should be eliminated.

The County Council should for the Lake County Auditor establish a schedule for eliminating dormant fund accounts. From the standpoint of the State Board of Accounts, if this were established at two years there apparently would be no write up. This guideline would be less than the three years which gave rise to the audit notation. The Lake County Council will consider adopting an ordinance instructing the Lake County Auditor to eliminate dormant accounts after there has been no activity for two audit years.

Sincerely,
ATTORNEY TO THE BOARD OF COMMISSIONERS

John S. Dull
JSD/rmk

CC: Board of Commissioners
Lake County Field Office, State Board of Accounts