

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

SPECIAL INVESTIGATION REPORT
OF
BOARD OF COUNTY COMMISSIONERS
OWEN COUNTY, INDIANA
January 1, 2012 to December 31, 2017



FILED

10/11/2018

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STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

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TO: THE OFFICIALS OF OWEN COUNTY, INDIANA

This is a special investigation report for Owen County (County), for the period January 1, 2012 to December 31, 2017, and is in addition to any other report for the County as required under Indiana Code 5-11-1. All reports pertaining to the County may be found at www.in.gov/sboa/.

We performed procedures to determine compliance with applicable Indiana laws and uniform compliance guidelines established by the Indiana State Board of Accounts and were limited to records associated with the sale/purchase of a Mack Semi to the County. The Results and Comments contained herein describe the identified reportable instances of noncompliance found as a result of these procedures. Our tests were not designed to identify all instances of noncompliance; therefore, noncompliance may exist that is unidentified.

Any Official Response to the Results and Comments, incorporated within this report, was not verified for accuracy.

Paul D. Joyce
Paul D. Joyce, CPA
State Examiner

September 20, 2018

BOARD OF COUNTY COMMISSIONERS
OWEN COUNTY
RESULTS AND COMMENTS

BACKGROUND

Donald G. Minnick (Minnick), former County Commissioner, was criminally charged with a class D felony official misconduct and a class D felony conflict of interest on November 8, 2017. Case number 60C01-1711-FD863 was filed in the Owen Circuit Court, Owen County, Indiana, on November 8, 2017. Minnick was found guilty on August 24, 2018, at which time he relinquished his position as County Commissioner.

Mark Brewer (Brewer) is an employee of Minnick and lives in a house owned by Minnick.

CONFLICT OF INTEREST

Minnick personally benefited from a trade/purchase of equipment between the County and Brewer.

Per vehicle title files obtained from the Bureau of Motor Vehicles, Brewer purchased a Mack Semi from Minnick for \$1,000 on December 12, 2012. On the same date, the Mack Semi was sold by Brewer to the County for the purchase price of \$8,500.

An invoice dated December 14, 2012, was submitted to the County Auditor's office for the purchase of the Mack Semi with a trade-in of a Freightliner owned by the County. The invoice stated it was from Brewer and contained a purchase price of \$8,500 for the Mack Semi, with a trade-in value of \$2,500 for the Freightliner, for a net purchase price of \$6,000. The claim submitted for the purchase was approved on January 7, 2013, by all three County Commissioners, including Minnick. Owen County check number 118567, dated January 7, 2013, was issued to Brewer in the amount of \$6,000. Subpoenaed bank records revealed the check to Brewer was deposited into Minnick's personal bank account.

The Freightliner traded by the County to Brewer was subsequently sold to a truck parts company. The title indicates the date of sale was February 5, 2013, and the seller was Minnick as President of the Board of County Commissioners, not Brewer. A representative of the company confirmed that two Freightliners were purchased from Minnick for \$5,000 and provided a copy of the cancelled check issued to Minnick on April 19, 2013. Subpoenaed bank records revealed the check was deposited into Minnick's personal bank account.

Indiana Code 35-44.1-1-4 states in part:

". . . (b) A public servant who knowingly or intentionally:

- (1) has a pecuniary interest in; or
- (2) derives a profit from;

a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Level 6 felony.

(c) It is not an offense under this section if any of the following apply:

- (1) The public servant or the public servant's dependent receives compensation through salary or an employment contract for:
 - (A) services provided as a public servant; or
 - (B) expenses incurred by the public servant as provided by law.

BOARD OF COUNTY COMMISSIONERS
OWEN COUNTY
RESULTS AND COMMENTS
(Continued)

- (2) The public servant's interest in the contract or purchase and all other contracts and purchases made by the governmental entity during the twelve (12) months before the date of the contract or purchase was two hundred fifty dollars (\$250) or less.
 - (3) The contract or purchase involves utility services from a utility whose rate structure is regulated by the state or federal government.
 - (4) The public servant:
 - (A) acts in only an advisory capacity for a state supported college or university; and
 - (B) does not have authority to act on behalf of the college or university in a matter involving a contract or purchase.
 - (5) A public servant under the jurisdiction of the state ethics commission (as provided in IC 4-2-6-2.5) obtains from the state ethics commission, following full and truthful disclosure, written approval that the public servant will not or does not have a conflict of interest in connection with the contract or purchase under IC 4-2-6 and this section. The approval required under this subdivision must be:
 - (A) granted to the public servant before action is taken in connection with the contract or purchase by the governmental entity served; or
 - (B) sought by the public servant as soon as possible after the contract is executed or the purchase is made and the public servant becomes aware of the facts that give rise to a question of conflict of interest.
 - (6) A public servant makes a disclosure that meets the requirements of subsection (d) or (e) and is:
 - (A) not a member or on the staff of the governing body empowered to contract or purchase on behalf of the governmental entity, and functions and performs duties for the governmental entity unrelated to the contract or purchase;
 - (B) appointed by an elected public servant;
 - (C) employed by the governing body of a school corporation and the contract or purchase involves the employment of a dependent or the payment of fees to a dependent;
 - (D) elected; or
 - (E) a member of, or a person appointed by, the board of trustees of a state supported college or university.
 - (7) The public servant is a member of the governing board of, or is a physician employed or contracted by, a hospital organized or operated under IC 16-22-1 through IC 16-22-5 or IC 16-23-1.
- (d) A disclosure must:
- (1) be in writing;

BOARD OF COUNTY COMMISSIONERS
OWEN COUNTY
RESULTS AND COMMENTS
(Continued)

- (2) describe the contract or purchase to be made by the governmental entity;
- (3) describe the pecuniary interest that the public servant has in the contract or purchase;
- (4) be affirmed under penalty of perjury;
- (5) be submitted to the governmental entity and be accepted by the governmental entity in a public meeting of the governmental entity before final action on the contract or purchase;
- (6) be filed within fifteen (15) days after final action on the contract or purchase with:
 - (A) the state board of accounts; and
 - (B) if the governmental entity is a governmental entity other than the state or a state supported college or university, the clerk of the circuit court in the county where the governmental entity takes final action on the contract or purchase; and
- (7) contain, if the public servant is appointed, the written approval of the elected public servant (if any) or the board of trustees of a state supported college or university (if any) that appointed the public servant. . . ."

Funds misappropriated, diverted or unaccounted for through malfeasance, misfeasance, or non-feasance in office of any officer or employee may be the personal obligation of the responsible officer or employee. (Accounting and Uniform Compliance Guidelines Manual for Counties, Chapter 1)

We requested that Minnick reimburse the County \$7,500. This represents the difference between the sales price of \$1,000 to Brewer and the purchase price of \$8,500 on the invoice presented to the County Auditor. (See Summary of Charges, page 10)

SPECIAL INVESTIGATION COSTS

The State of Indiana incurred costs due to the special investigation of the Board of County Commissioners.

Audit costs incurred because of poor records, nonexistent records, or any other inadequate bookkeeping practices, or because of theft or a shortage may be the personal obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines Manual for Counties, Chapter 1)

We requested that Minnick reimburse the State of Indiana for special investigation costs in the amount of \$2,125.24. (See Summary of Charges, page 10)

INTERNAL CONTROLS

Internal control weaknesses in the oversight of operations and purchasing and disposing of equipment within the County allowed Minnick to personally benefit from the purchase and disposal of equipment of the County Highway Department.

BOARD OF COUNTY COMMISSIONERS
OWEN COUNTY
RESULTS AND COMMENTS
(Continued)

The Indiana State Board of Accounts (SBOA) is required under Indiana Code 5-11-1-27(e) to define the acceptable minimum level of internal control standards. To provide clarifying guidance, the State Examiner compiled the standards contained in the manual, *Uniform Internal Control Standards for Indiana Political Subdivisions*. All political subdivisions subject to audit by SBOA are expected to adhere to these standards. The standards include adequate control activities. According to this manual:

"Control activities are the actions and tools established through policies and procedures that help to detect, prevent, or reduce the identified risks that interfere with the achievement of objectives. Detection activities are designed to identify unfavorable events in a timely manner whereas prevention activities are designed to deter the occurrence of an unfavorable event. Examples of these activities include reconciliations, authorizations, approval processes, performance reviews, and verification processes.

An integral part of the control activity component is segregation of duties. . . .

There is an expectation of segregation of duties. If compensating controls are necessary, documentation should exist to identify both the areas where segregation of duties are not feasible or practical and the compensating controls implemented to mitigate the risk. . . ."

EMPLOYEE DISHONESTY COVERAGE

The following is information regarding employee dishonesty insurance obtained by the County:

<u>Period</u>	<u>Amount</u>
03-08-12 to 03-08-13	\$ 50,000
03-08-13 to 03-08-14	50,000
03-08-14 to 03-08-15	50,000
03-08-15 to 03-08-16	50,000
03-08-16 to 03-08-17	545,000

BOARD OF COUNTY COMMISSIONERS
OWEN COUNTY
EXIT CONFERENCE

The contents of this report were discussed on September 20, 2018, with Patty Steward, County Auditor.

The contents of this report were discussed on September 20, 2018, with Donald G. Minnick, former County Commissioner.

Hickam & Lorenz
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A Professional Corporation

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September 27, 2018

State Board of Accounts
302 W Washington Street Room E418
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Sent via email to ldavid@sboa.in.gov

RE: OFFICIAL RESPONSE

To Whom It May Concern:

Please be advised that I represent Donald G. Minnick. This is an official response to the results and comments made as a part of the Exit Conference regarding the Owen County Board of Commissioners examination covering the period January 1, 2012 to December 31, 2017. The date of the conference was September 20, 2018.

The background report suggests that Commissioner Donald G. Minnick was criminally charged with a Class D Felony of Official Misconduct and Felony Conflict of Interest on November 8, 2017. Commissioner Minnick was found guilty on August 24, 2018 at which time he relinquished his position as Commissioner.

The report comments that Mark Brewer purchased a Mack Semi from Minnick for \$1000 on December 12, 2012, and on the same date the Mack Semi was sold by Brewer for the purchase price of \$8500. Donald G. Minnick disputes and denies that statement, and it is inaccurate in several regards. In truth and in fact the Mack Semi was sold to Mark Brewer several months in advance of December 12, 2012 as a contract sale, and the total purchase price was to be \$7000 for the transaction with Donald G. Minnick. Mark Brewer testified at the criminal trial that he decided to abandon his efforts to become a commercial truck driver, and Donald G. Minnick had suggested that perhaps that the Owen County Highway Department might be interested in the unit. To that end, Mark Brewer sold the Mack Semi to the Owen County Highway Department for \$6000 in cash and trade of a non-working International Semi which the county valued at \$2500.

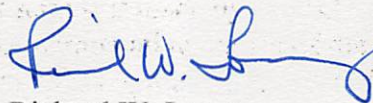
The SBOA has requested that Minnick reimburse Owen County \$7500 representing the difference between the sales price of \$1000 to Brewer and the invoice of \$8500 presented to the County Auditor. The SBOA analysis ignores the testimony adduced at trial that the Mack Semi was valued and worth more than \$8500, that Mark Brewer testified that the contract for the

purchase of the semi was \$7000, and essentially that the County did not suffer any loss as a result of the transaction. The valuation of the Mack semi was made by Brad Crone, an independent third-party diesel mechanic who produced multiple comparative values of the same make, model, and mileage which were introduced at trial. He gave his opinion that the vehicle was valued between \$12,500 and \$15,000. In light of this testimony and during the sentencing proceeding, the Prosecuting attorney further requested no restitution.

The SBOA position would require the examiner to pick and choose portions of the testimony which it chooses to believe even of witnesses which the State purports to use to prove the criminal allegations. The SBOA focuses on the title transfer documents purporting to show a \$1000 purchase price, which is a misstatement of the facts. Either Mark Brewer was inconsistent at trial or on his transfer of title documents. You cannot believe both and the sworn testimony about valuation has precedence.

The SBOA further assigns a cost of investigation; however, the representative at the exit interview indicated that there were "other matters" which they had investigated which took additional time. First National Bank has reported that it has provided copies of the same transactions involving the subject matter of this exit as well as other prior investigations, and it is believed that all of these time requirements were unnecessary and duplicitous.


Sincerely,



Richard W. Lorenz
Attorney at Law

RWL:tc

Acknowledged by:



Donald G. Minnick

BOARD OF COUNTY COMMISSIONERS
 OWEN COUNTY
 SUMMARY OF CHARGES
 (Due to Malfeasance, Misfeasance, or Nonfeasance)

	<u>Charges</u>	<u>Credits</u>	<u>Balance Due</u>
Donald Minnick, former County Commissioner:			
Conflict of Interest, pages 3 through 5	\$ 7,500.00	\$ -	\$ 7,500.00
Special Investigation Costs, page 5	<u>2,125.24</u>	<u>-</u>	<u>2,125.24</u>
Totals	<u>\$ 9,625.24</u>	<u>\$ -</u>	<u>\$ 9,625.24</u>

This report was forwarded to the Office of the Indiana Attorney General and the local prosecuting attorney.

AFFIDAVIT

STATE OF INDIANA)
)
Greene COUNTY)

I, Annette Ladson, Field Examiner, being duly sworn my oath, state that the foregoing report based on the official records of Owen County, Indiana, for the period from January 1, 2012 to December 31, 2017, is true and correct to the best of my knowledge and belief.

Annette Ladson
Field Examiner

Subscribed and sworn to before me this 3 day of October, 2018

J. Kevin Kramer
Notary Public

My Commission Expires: 1-22-2025

County of Residence: Greene

