

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

SUPPLEMENTAL COMPLIANCE REPORT

OF

TOWN OF BRYANT

JAY COUNTY, INDIANA

January 1, 2014 to December 31, 2017



FILED
01/18/2019

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SCHEDULE OF OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Clerk-Treasurer	Peggy A. Smitley	01-01-14 to 12-31-16
	Gregg G. Ellenberger (interim)	01-01-17 to 08-31-17
	Anita L. Alberson-Boice	09-01-17 to 12-31-18
President of the Town Council	Scott A. Schoenlein	01-01-14 to 12-31-17
	Gregg G. Ellenberger	01-01-18 to 12-31-18



STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

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TO: THE OFFICIALS OF THE TOWN OF BRYANT, JAY COUNTY, INDIANA

This report is supplemental to our audit report of the Town of Bryant (Town), for the period from January 1, 2014 to December 31, 2017. It has been provided as a separate report so that the reader may easily identify any Audit Results and Comments that pertain to the Town. It should be read in conjunction with our Financial Statements Audit Report of the Town, which provides our opinions on the Town's financial statement and federal program compliance. This report may be found at www.in.gov/sboa/.

As authorized under Indiana Code 5-11-1, we performed procedures to determine compliance with applicable Indiana laws and uniform compliance guidelines established by the Indiana State Board of Accounts. The Audit Result and Comment contained herein describes the identified reportable instance 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 Audit Result and Comment, incorporated within this report, was not verified for accuracy.

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

June 26, 2018

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TOWN COUNCIL
TOWN OF BRYANT

TOWN COUNCIL
TOWN OF BRYANT
AUDIT RESULT AND COMMENT

OVERPAYMENT OF COMPENSATION

Former Clerk-Treasurer Peggy Smitley, resigned effective December 31, 2016, and a successor was not immediately appointed, leaving a vacancy in the Clerk-Treasurer's position.

The Indiana Code provides when a vacancy in the office of a town Clerk-Treasurer is vacant and the Town Council is unable to fill the office, the Town Council may select a Town Council member who shall assume the duties of and serve as the ex officio Clerk-Treasurer without receiving any additional compensation.

Gregg G. Ellenberger (Ellenberger), Town Council member, performed the duties of the Clerk-Treasurer from January 1, 2017 through August 31, 2017, and received compensation totaling \$4,237.50, in addition to his Town Council salary.

Indiana Code 36-5-6-9 states in part:

"(a) This section applies if an office of town clerk-treasurer is vacant and the town legislative body is unable to fill the office under IC 3-13-9-3.

(b) The town legislative body may select a town legislative body member, who shall assume the duties of the office of town clerk-treasurer. For purposes of Article 2, Section 9 of the Constitution of the State of Indiana and Indiana law, if a town legislative body member serves as the ex officio town clerk-treasurer, the duties assumed by the town legislative body member:

- (1) are considered part of the duties prescribed by law for the office of town legislative body member; and
- (2) are not considered a second office.

A town legislative body member may not receive any additional compensation for assuming the duties of the town clerk treasurer. . . ."

All compensation and benefits paid to officials and employees must be included in the labor contract, salary ordinance, resolution, or salary schedule adopted by the governing body unless otherwise authorized by law. Compensation must be paid in a manner that will facilitate compliance with state and federal reporting requirements. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 1)

We requested that Ellenberger reimburse the Town \$4,237.50 for the overpayment of compensation. Ellenberger intends to present a repayment proposal to the Town Council. (See Summary of Charges, page 10)

TOWN COUNCIL
TOWN OF BRYANT
EXIT CONFERENCE

The contents of this report were discussed on June 26, 2018, with Anita L. Alberson-Boice, Clerk-Treasurer, and Gregg G. Ellenberger, President of the Town Council.

HINKLE, RACSTER & SCHEMENAUR

PROFESSIONAL CORPORATION

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WAYNE W. HINKLE
(1906-2000)

July 11, 2018

Ms. Bailey Whitton
Field Examiner
Indiana State Board of Accounts
bwhitton@sboafe.in.gov

RE: Town of Bryant, Indiana

SENT VIA EMAIL

Dear Mr. Whitton:

This letter is in response to your finding that Mr. Ellenberger overpaid himself in the year 2017 for assuming the role of the Town's Clerk-treasurer. Early in 2017, the Town informed me that the former Clerk-treasurer, Ms. Smitley, had resigned. The Town Council wanted to know the procedure for selecting a new Clerk-treasurer. I was further informed that Ms. Smitley was elected as an Independent candidate and therefore there was no caucus procedure to fill the vacancy. In the case of a vacancy, therefore, the Town Council was required to select a successor.

Sometime later in 2017, the Town informed me that they had not been successful in locating an individual that was interested in assuming the position. I informed them that could contract with another Town's Clerk-treasurer or engage an accountant to fill those duties. It was my understanding that no other Clerk-treasurer was willing to assume the responsibilities and that hiring an accountant would not be financially feasible. The final option discussed was having a member of the Town Council step in to take over the duties of Clerk-treasurer.

Mr. Ellenberger discussed with me that the Council intended to appoint him as Clerk-treasurer and he had agreed to assume that role. While Mr. Ellenberger may have collected a salary for both offices, I believe that this was an inadvertent misunderstanding created as result of the vacancy of the Clerk-treasurer's office and not a result of malfeasance. When Mr. Ellenberger spoke with me, I misunderstood what the Town Council intended to do. It was my understanding that Mr. Ellenberger would no longer serve on the Council but would become the Town's Clerk-treasurer on an interim basis. He would fill this role while the Town would

continue to actively seek an individual who would be willing to fill that role on a more permanent basis. Once a permanent replacement was found, Mr. Ellenberger would return to the Council.

While my contact with the Town was somewhat limited, I can assure you that when dealing with the Town, Mr. Ellenberger acted in a way consistent with a Clerk-treasurer. In 2017, my office had contact with Mr. Ellenberger concerning the collection of past due sewer accounts and the procedures for placing of liens against properties who had unpaid bills. My office's interactions with Mr. Ellenberger were consistent with the types of interactions we have with a Clerk-treasurer, rather than a member of the Council.

Due to Mr. Ellenberger's extensive work as Clerk-treasurer, the Town of Bryant would request that Mr. Ellenberger refund the salary earned as a member of the Town Council. If you have any further questions, please feel free to contact me.

Very truly yours,

HINKLE, RACSTER & SCHEMENAUR

Wesley A. Schemenaur

WAS:

TOWN COUNCIL
TOWN OF BRYANT
SUMMARY OF CHARGES
(Due to Malfeasance, Misfeasance, or Nonfeasance)

	Charges	Credits	Balance Due
Gregg G. Ellenberger, Town Council member: Overpayment of Compensation, page 6	\$ 4,237.50	\$ -	\$ 4,237.50

This report was forwarded to the Office of the Attorney General.

AFFIDAVIT

STATE OF INDIANA)
Allen COUNTY))

We, Nathan Kuhn and Bailey Whitton, Field Examiners, being duly sworn on our oaths, state that the foregoing report based on the official records of the Town of Bryant, Jay County, Indiana, for the period from January 1, 2014 to December 31, 2017, is true and correct to the best of our knowledge and belief.

Nathan Kuhn

Bailey Whitton
Field Examiners

Subscribed and sworn to before me this 26th day of July, 2018.

Rebecca K. Butler
Notary Public
REBECCA K. BUTLER

My Commission Expires: 5/2/2021
County of Residence: Allen

