

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

SPECIAL INVESTIGATION REPORT
OF

CLERK-TREASURER
TOWN OF SWAYZEE
GRANT COUNTY, INDIANA

January 1, 2016 to January 6, 2019



FILED
09/16/2019

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STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF ACCOUNTS
302 WEST WASHINGTON STREET
ROOM E418
INDIANAPOLIS, INDIANA 46204-2769

Telephone: (317) 232-2513
Fax: (317) 232-4711
Web Site: www.in.gov/sboa

TO: THE OFFICIALS OF THE TOWN OF SWAYZEE, GRANT COUNTY, INDIANA

This is a special investigation report for the Town of Swayzee (Town), for the period January 1, 2016 to January 6, 2019, and is in addition to any other report for the Town as required under Indiana Code 5-11-1. All reports pertaining to the Town 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 disbursements. 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

July 30, 2019

CLERK-TREASURER
TOWN OF SWAYZEE
RESULTS AND COMMENTS

BACKGROUND

James Brian Hall (Hall) was elected Clerk-Treasurer of the Town for a four-year term from January 1, 2016 through December 31, 2019. As Clerk-Treasurer of the Town, Hall was responsible for all disbursements made from Town funds. Hall resigned effective January 6, 2019.

The Indiana State Board of Accounts was notified by Town officials of concerns relating to penalties and interest paid or incurred by the Town for late payment of payroll taxes and other payments. The Indiana State Board of Accounts performed an investigation of Town disbursements made by Hall as Clerk-Treasurer. The results of our investigation are described in the following comments.

PENALTIES, INTEREST, AND OTHER CHARGES

During the period reviewed the Town paid penalties, interest, and other charges totaling \$5,044.23 for late payments. The late payments were state payroll withholdings remittances, state sales tax remittances, and utility payments.

In December 2018, the Town remitted federal payroll withholdings and taxes for tax periods from June 30, 2016 through December 31, 2017. Subsequent to Hall's resignation, the Town received notices from the Internal Revenue Service (IRS) assessing penalties, interest, and other charges for the late remittances of the 2016 and 2017 taxes. The Town's attorney submitted a letter to the IRS requesting that the penalties, interest, and other charges be waived; however, the IRS denied the request. The IRS response dated June 14, 2019, indicated the penalties, interest, and other charges for the late remittances totaled \$39,738.13 and were due by July 5, 2019. The Town has not paid these fees.

Officials and employees have a duty to pay claims and remit taxes in a timely fashion. Failure to pay claims or remit taxes in a timely manner could be an indicator of serious financial problems which should be investigated by the governmental unit. Additionally, officials and employees have a responsibility to perform duties in a manner which would not result in any unreasonable fees being assessed against the governmental unit. Any penalties, interest or other charges paid by the governmental unit may be the personal obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 1)

We requested that Hall reimburse the Town \$44,782.36 for penalties, interest, and other charges paid and/or incurred. (See Summary of Charges, page 8)

SPECIAL INVESTIGATION COSTS

The State of Indiana incurred costs, in the amount of \$10,728.71, due to the special investigation of the Town.

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 Townships, Chapter 1)

We requested that Hall reimburse the State of Indiana for special investigation costs in the amount of \$10,728.71. (See Summary of Charges, page 8)

CLERK-TREASURER
TOWN OF SWAYZEE
RESULTS AND COMMENTS
(Continued)

OFFICIAL BOND

The Town obtained an official bond for Hall for the period January 1, 2016 to December 31, 2019, in the amount of \$30,000.

The Town failed to obtain the annual coverage required by statute for the years 2016 through 2019.

Indiana Code 5-4-1-18 states in part:

". . . (e) Except as provided in subsections (k) and (l), the fiscal bodies of the respective units shall fix the amount of the bond of city controllers, city clerk-treasurers, town clerk-treasurers, Barrett Law fund custodians, county treasurers, county sheriffs, circuit court clerks, township trustees, and conservancy district financial clerks as follows:

- (1) The amount must equal thirty thousand dollars (\$30,000) for each one million dollars (\$1,000,000) of receipts of the officer's office during the last complete fiscal year before the purchase of the bond, subject to subdivision (2).
- (2) The amount may not be less than thirty thousand dollars (\$30,000) nor more than three hundred thousand dollars (\$300,000) unless the fiscal body approves a greater amount for the officer or employee. . . .

(n) The following apply to a bond that is filed to comply with this section:

- (1) Each bond must provide coverage in the amount required for the individual covered under the bond for one (1) year (the policy year) commencing on the first day of the:
 - (A) calendar year;
 - (B) fiscal year of the political subdivision or governmental unit; or
 - (C) individual's service in the office or position for which a bond is required.
- (2) A continuous bond may be used to satisfy the requirement of subdivision (1) if the bond:
 - (A) is renewed on an annual basis for the period during which the individual serves in the office or position for which a bond is required; and
 - (B) provides coverage in the amount required for the individual covered under the bond for each policy year. . . ."

DISBURSEMENT DOCUMENTATION

For 2018, 77 disbursements totaling \$225,975.47 were not supported by itemized vendor invoices or other documentation. One disbursement for \$150,794.06 was investment related. The remaining disbursements included, but were not limited to, debt payments, sales tax remittances, and utility payments.

CLERK-TREASURER
TOWN OF SWAYZEE
RESULTS AND COMMENTS
(Continued)

Indiana Code 5-11-10-1.6 states in part:

". . . (b) As used in this section, 'claim' means a bill or an invoice submitted to a governmental entity for goods or services.

(c) The fiscal officer of a governmental entity may not draw a warrant or check for payment of a claim unless:

- (1) there is a fully itemized invoice or bill for the claim;
- (2) the invoice or bill is approved by the officer or person receiving the goods and services;
- (3) the invoice or bill is filed with the governmental entity's fiscal officer;
- (4) the fiscal officer audits and certifies before payment that the invoice or bill is true and correct; and
- (5) payment of the claim is allowed by the governmental entity's legislative body or the board or official having jurisdiction over allowance of payment of the claim. . . .

(d) The fiscal officer of a governmental entity shall issue checks or warrants for claims by the governmental entity that meet all of the requirements of this section. The fiscal officer does not incur personal liability for disbursements:

- (1) processed in accordance with this section; and
- (2) for which funds are appropriated and available. . . ."

Supporting documentation such as receipts, canceled checks, tickets, invoices, bills, contracts, and other public records must be available for audit to provide supporting information for the validity and accountability of monies disbursed. Payments without supporting documentation may be the personal obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 1)

INTERNAL CONTROLS

The Town had not established controls including segregation of duties, and oversight to ensure timely remittances of amounts due to vendors and government agencies, as well as ensuring documentation was retained to support payments. One person was solely responsible for making payments to vendors and governmental agencies.

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:

CLERK-TREASURER
TOWN OF SWAYZEE
RESULTS AND COMMENTS
(Continued)

"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. . . ."

CLERK-TREASURER
TOWN OF SWAYZEE
EXIT CONFERENCE

The contents of this report were discussed on July 30, 2019, with James Brian Hall, former Clerk-Treasurer; Desiree Arenas, Clerk-Treasurer; Aaron Travis, President of the Town Council; Bridgette Boswell, Town Council member; and Jason McVicker, Town Attorney.

VOYLES VAIANA LUKEMEYER BALDWIN & WEBB

ATTORNEYS AND COUNSELORS AT LAW

ONE INDIANA SQUARE

211 NORTH PENNSYLVANIA STREET, SUITE 2400

INDIANAPOLIS, INDIANA 46204

(317) 632-4483

FACSIMILE

(317) 631-1199

www.voyleslegal.com

JAMES H. VOYLES JR.
FREDERICK VAIANA
JENNIFER M. LUKEMEYER
MARK C. WEBB
JEFFREY A. BALDWIN
TYLER D. HELMOND
BRITTNEY A. NEWLAND

FRANK A. SYMMES (1885-1966)
GEORGE M. OBER (1911-1989)
CHARLES W. SYMMES (1917-2000)

RICHARD W. CARDWELL (RETIRED)
J. J. PAUL, III (RETIRED)

OF COUNSEL

SHARON R. MERRIMAN

August 9, 2019

Indiana State Board of Accounts
302 W. Washington St., Rm. E-418
Indianapolis, IN 46204-2765

VIA ELECTRONIC MAIL TO: ldavid@sboa.in.gov

RE: *Brian Hall and Town of Swayzee*

Greetings:

Please be advised I represent Mr. Brian Hall in his capacity as the former Clerk/Treasurer for the Town of Swayzee. Your office conducted an exit interview with Mr. Hall on July 30, 2019 and prepared a Special Investigation Report ("Report"). Pursuant to Ind. Code § 5-11-5, *et seq.*, Mr. Hall, in the absence of personal counsel, elected to respond to the report and interview within 10 days of July 30, 2019. Please consider this his formal response.

Mr. Hall responded to the Report orally during his exit interview. He does not agree with the allegations and conclusions as stated in the report, or any of its suggested remedies of resolution. This letter should not be interpreted to mean he waives any administrative, statutory, or constitutional right to due process of law in any future proceeding. Mr. Hall understands this response will be bound into any final report by your office.

Thank you for the opportunity to respond on behalf of Mr. Hall. Feel free to contact me with any questions or concerns. In addition to the above contact information, my email address is: fvaiana@voyleslegal.com.

Sincerely,


Frederick Vaiana

FV/sfg

CLERK-TREASURER
TOWN OF SWAYZEE
SUMMARY OF CHARGES
(Due to Malfeasance, Misfeasance, or Nonfeasance)

	<u>Charges</u>	<u>Credits</u>	<u>Balance Due</u>
James Brian Hall, former Clerk-Treasurer:			
Penalties, Interest, and Other Charges, page 3	\$ 44,782.36	\$ -	\$ 44,782.36
Special Investigaion Costs, page 3	<u>10,728.71</u>	<u>-</u>	<u>10,728.71</u>
 Totals	 <u>\$ 55,511.07</u>	 <u>\$ -</u>	 <u>\$ 55,511.07</u>

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

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AFFIDAVIT

STATE OF INDIANA)
ALLEN COUNTY)

I, Stephen R. Poor, Field Examiner, being duly sworn on my oath, state that the foregoing report based on the official records of the Town of Swayzee, Grant County, Indiana, for the period from January 1, 2016 to January 6, 2019, is true and correct to the best of my knowledge and belief.

Stephen R. Poor
Field Examiner

Subscribed and sworn to before me this 26th day of August, 2019

Carrie L. Pflueger
Notary Public

My Commission Expires _____
County of Residence: Allen County, State of Indiana
My Commission Expires June 29, 2024

