

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

SPECIAL COMPLIANCE REPORT  
OF

CLERK-TREASURER  
TOWN OF SWAYZEE  
GRANT COUNTY, INDIANA

January 1, 2015 to December 31, 2018



**FILED**  
03/06/2020



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**STATE OF INDIANA**  
AN EQUAL OPPORTUNITY EMPLOYER

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

This is a special compliance report for the Town of Swayzee (Town), Grant County, for the period January 1, 2015 to December 31, 2018, 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/](http://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 to the Internal Revenue Service (IRS). 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

November 18, 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 paid by the Town for various issues related to late filing of Internal Revenue Service (IRS) Forms and late payment of payroll taxes for tax periods June 30, 2016 through December 31, 2017. The Indiana State Board of Accounts performed an investigation of a Town disbursement made as a result of Hall's failure to file IRS Forms and remit payroll taxes, as required by law. The result of our investigation was included in a Special Investigation Report B53327 filed on September 16, 2019. This is a follow up report based upon our review.

**PENALTIES**

Subsequent to Hall's resignation, and the filing of the Special Investigation Report B53327, the Town received notice from the IRS assessing additional penalties for the failure to file IRS Forms W-2 for tax period ending December 31, 2016. The Town's attorney submitted a letter to the IRS requesting that the penalties be waived; however, the IRS denied the request. The IRS notice dated September 2, 2019, indicated the penalties for failure to file IRS Forms W-2 totaled \$20,123.21. The Town paid the penalty in the amount of \$20,123.21 on October 25, 2019.

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 \$20,123.21 for penalties paid. (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. . . ."

CLERK-TREASURER  
TOWN OF SWAYZEE  
EXIT CONFERENCE

The contents of this report were discussed on November 18, 2019, with Desiree Arenas, Clerk-Treasurer; Aaron Travis, President of the Town Council; and Charlie Maiers, Attorney for Brian Hall.

**DUE DOYLE FANNING & ALDERFER, LLP**  
ATTORNEYS AT LAW

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November 26, 2019

*Sent Via Email*  
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State Board of Accounts  
302 W. Washington St.  
Rm. E418  
Indianapolis, IN 46204-2765

**Re. OFFICIAL RESPONSE**  
**Town of Swayzee Exit Conference**  
**November 18, 2019**

To Whom it May Concern,

Please consider this Brian Hall's official response to the results and comments contained within the State Board of Accounts' report for the period of January 1, 2015 through December 31, 2018.

Brian Hall notes at the outset that his term as elected Clerk-Treasurer did not commence until January 1, 2016. According, he was not involved with anything pertaining to these reports for the first year for which they were drafted.

Additionally, Brian Hall notes that the penalties recited in this report<sup>1</sup> are not consistent with the penalties noted in the State Board of Accounts Report B53327<sup>2</sup>. In light of this discrepancy, Mr. Hall's confidence in the amounts due and owing is understandably lacking, and he is concerned that, to the degree he is personally liable for such amounts, he may be subjected to overlapping, repeating, or otherwise redundant obligations.

As pertains the request contained within the comments to this Exit Conference that Mr. Hall repay the Town of Swayzee or the State of Indiana, Mr. Hall directs attention to Ind. Code §36-5-6-6(b), which states, "A clerk-treasurer is not liable, in an individual capacity, for any act or omission occurring in connection with the performance of the requirements set forth in subsection (a), unless the act or omission constitutes gross negligence or an intentional disregard of the requirements." To date, despite his request for same, no entity involved herewith has provided any evidence of any kind that would demonstrate that Mr. Hall's alleged acts and/or

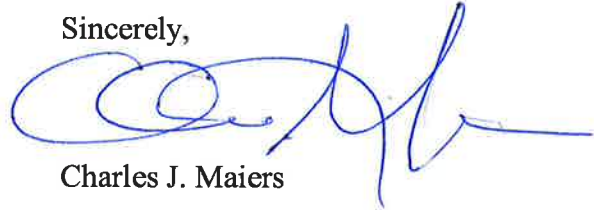
<sup>1</sup> In the amount of \$20,123.21

<sup>2</sup> In the amount of \$44,728.71.

omissions constituted gross negligence or an intentional disregard of the requirements of the clerk-treasurer position.

Should you have any questions concerning Mr. Hall's position, I invite you to contact me for additional discussion.

Sincerely,

A handwritten signature in blue ink, appearing to read 'CJM', with a long horizontal flourish extending to the right.

Charles J. Maiers

CJM

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, page 8	<u>\$ 20,123.21</u>	<u>\$ -</u>	<u>\$ 20,123.21</u>

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

AFFIDAVIT

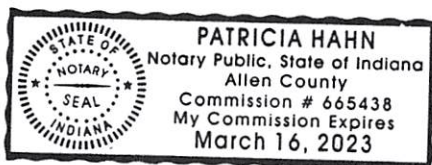
STATE OF INDIANA )  
Allen COUNTY )

We, Natasha Turk and Shannon Lopez, Field Examiners, being duly sworn on our oaths, state that the foregoing report based on the official records of the Town of Swayzee, Grant County, Indiana, for the period from January 1, 2015 to December 31, 2018, is true and correct to the best of our knowledge and belief.

Natasha Turk

Shannon Lopez  
Field Examiners

Subscribed and sworn to before me this 2 day of March, 2020



Patricia Hahn Patricia Hahn  
Notary Public

My Commission Expires: March 16, 2023

County of Residence: Allen