

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

SPECIAL INVESTIGATION REPORT

OF

MUNCIE SANITARY DISTRICT

DELAWARE COUNTY, INDIANA

January 1, 2018 to April 24, 2020



FILED
09/02/2020

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TO: THE OFFICIALS OF THE MUNCIE SANITARY DISTRICT, DELAWARE COUNTY, INDIANA

This is a special investigation report for the Muncie Sanitary District (Sanitary District) for the period January 1, 2018 to April 24, 2020, and is in addition to any other report for the Sanitary District as required under Indiana Code 5-11-1. All reports pertaining to the Sanitary District 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 compensation and benefits related to the former Sanitary District Administrator, and Sanitary District Board members. 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 is incorporated within this final report pursuant to Indiana Code 5-11-5-1(b); however, the official response was not verified for accuracy.

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

May 19, 2020

MUNCIE SANITARY DISTRICT
RESULTS AND COMMENTS

BACKGROUND

During the audit of the City of Muncie (City), including the Sanitary District, concerns were raised regarding leave time being accumulated by Joseph Evans (Evans), William Smith (Smith), and Michael Cline (Cline), Sanitary District Board members. The leave time being accumulated was not being used by the Sanitary District Board members, but it was being donated to Debra Grigsby (Grigsby), former Sanitary District Administrator, and another Sanitary District employee. Grigsby was placed on unpaid administrative leave on July 16, 2019; however, she continued to be paid from July 16, 2019 through April 17, 2020, through the use of leave time. Grigsby provided a letter as notice of resignation dated January 27, 2020, with a noted last date of employment of February 29, 2020.

SANITARY DISTRICT BOARD MEMBERS PAID TIME-OFF HOURS

Sanitary District Board Limited Powers with Respect to Paid Leave Time

The powers of the Sanitary District Board are addressed in Indiana Code 36-9-25-10.

With respect to personnel, the Sanitary District Board is limited to employing, paying, and fixing compensation. Indiana Code does not allow for the Sanitary District Board to authorize paid leave time.

In accordance with Indiana Code 5-10-6-1, the legislative body of the City is responsible for authorizing paid leave time. Per Indiana Code 36-1-2-9, the Common Council is the legislative body of the City.

Indiana Code 36-9-25-10 states in part:

"In performing its duties, the board may do the following: . . .

- (15) Employ and pay . . . and fixing the compensation for all its engineers, chemists, attorneys, bacteriologists, surveyors, inspectors, clerks, stenographers, laborers, supervisors, and other employees as provided by law for other executive departments of the municipality. . . ."

Indiana Code 5-10-6-1(b) states:

"Employees of the political subdivisions of the state may be granted a vacation with pay, sick leave, paid holidays, and other similar benefits by ordinance of the legislative body of a county, city, town, township, or controlling board of a municipally owned utility, board of directors or regents of a cemetery, or board of trustees of any library district."

Indiana Code 36-1-2-9 states in part:

"'Legislative body' means the: . . .

- (4) common council, for a city other than a consolidated city; . . ."

Sanitary District Board Accumulation and Donation of Paid Leave Time

The three Sanitary District Board members have been accumulating paid time-off hours in the form of vacation, sick, personal, and extended sick leave time.

MUNCIE SANITARY DISTRICT
RESULTS AND COMMENTS
(Continued)

As of April 24, 2020, the Sanitary District Board members' balances of leave time, uses, and donations were as follows:

	William Smith	Mike Cline	Joseph Evans
Initial Accumulation Date	<u>April 26, 2014</u>	<u>June 6, 2015</u>	<u>January 19, 2014</u>
Hours Earned Since Accumulation Date:			
Extended Sick	1,163.2	1,212.8	1,180.8
Personal	240.0	144.0	240.0
Sick	248.0	192.0	240.0
Vacation	<u>520.0</u>	<u>400.0</u>	<u>440.0</u>
Total Paid Time-Off Hours	2,171.2	1,948.8	2,100.8
Hours Used Since Accumulation Date:			
Personal to Extended Sick	(196.0)	(48.0)	(192.0)
Sick to Extended Sick	(200.0)	(144.0)	(192.0)
Vacation to Extended Sick	(320.0)	(280.0)	(320.0)
Vacation Used	(96.0)	(40.0)	-
Donation to Grigsby	(919.2)	(480.0)	(344.0)
Donation to others	<u>-</u>	<u>-</u>	<u>(240.0)</u>
Paid Time-Off Hours at April 24, 2020	<u><u>440.0</u></u>	<u><u>956.8</u></u>	<u><u>812.8</u></u>

The 96 hours of vacation leave used by Smith was for the time he served as the Sanitary District Administrator. Cline claimed use of 40 hours of vacation time while serving as a Sanitary District Board member; however, no additional compensation was paid to him beyond the salary received as a Sanitary District Board member.

Sanitary District Board members had not worked according to a work schedule, and they had not maintained timesheets documenting hours worked, or times of day worked in accordance with Indiana Code 5-11-9-4, which is also addressed in the Sanitary District Employee Handbook.

Also, per a Sanitary District Board meeting held on December 20, 2019, when questioned by a citizen on how many hours the Sanitary District Board members spend on Sanitary District Board business, the following was noted in the minutes:

"Mr. Smith said as Board President not District Administrator he may spend 25 hours a week. Mr. Cline said he truly does spend a lot of time on MSD related issues so his may be closer to 50 hours a week. . . . (Citizen name redacted) said versus standing on standard Board that may require up to 10 hours a month, every Board member spends 100 plus hours on the MSD Board. Mr. Smith said he was not going to attest that every Board member spends that much, but he can say he does as well as Mr. Cline. He said the third Board member is not here today, but his background is construction and he is sure he spends at least 10 hours a week helping with the Construction projects."

MUNCIE SANITARY DISTRICT
RESULTS AND COMMENTS
(Continued)

Resolution 13-18, "A Resolution of the Common Council of the City of Muncie, Indiana Approving Non-Bargaining Unit Employee Handbook" states in part: "A regular full-time employee is one who works 40 or more hours per week. Regular full-time employees are eligible for City employee benefits, including health insurance options, vacation, personal and sick time, and longevity pay. . . ."

The Sanitary District's Personnel Policies Handbook states in part:

". . . **REGULAR FULL-TIME** employees are those who are not in a part-time, seasonal, or probationary status (probationary period) and who are regularly scheduled to work the District's full-time schedule. They are eligible for the District's benefit package subject to the terms, conditions, and limitations of each benefit program. Regular full-time employees include exempt and non-exempt classifications. The Board of Sanitary Commissioners sets the full-time compensation rates annually for all positions. . . .

Vacation Leave . . . an employee is entitled to compensation, at his/her current pay rate, for any unused vacation leave at the time of resignation or retirement. . . . Personal/Sick Leave. . . . Upon termination days will be included in the employee's last regular pay . . . Sick Leave Bank. . . . Payment will be up to a maximum of nine hundred sixty (960) hours at the employee's current rate of pay. . . ."

Indiana Code 5-11-9-4(b) states:

"The state board of accounts shall require that records be maintained showing which hours were worked each day by officers and employees:

- (1) covered by section 1 or 2 of this chapter; and
- (2) employed by more than one (1) public agency or in more than one (1) position by the same public agency described in section 1 or 2 of this chapter."

The Sanitary District Board members did not meet the definition of a "regular full-time employee"; therefore, they did not have the ability to earn, use, or donate paid leave time. Paid leave time used, or donated and used by other employees should be repaid to the Sanitary District, by Sanitary District Board members and employees, jointly and severally, who used the donated leave time.

As of the April 24, 2020 pay date, none of the 1,743.20 hours of leave time donated to Grigsby had been used; however, the 240 hours of leave time donated by Evans was used by Sanitary District employee Angelica Nichols (Nichols). The 240 donated hours were used by Nichols at two different times, and different rates of pay as follows:

Extended Sick Leave Hours Used					
Employee	Hours	Rate	Amount	Employer Share	Totals
Angelica Nichols	80.0	\$ 16.75	\$ 1,340.00	\$ 253.80	\$ 1,593.80
Angelica Nichols	<u>160.0</u>	17.25	<u>2,760.00</u>	<u>522.75</u>	<u>3,282.75</u>
Totals	<u>240.0</u>		<u>\$ 4,100.00</u>	<u>\$ 776.55</u>	<u>\$ 4,876.55</u>

MUNCIE SANITARY DISTRICT
RESULTS AND COMMENTS
(Continued)

Each unit is responsible for complying with the ordinances, resolutions, and policies it adopts. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 1)

We requested Evans and Nichols, jointly and severally, reimburse the Sanitary District \$4,876.55 for leave time earned as a Sanitary District Board member, donated, and used by other employees. (See Summary of Charges, page 23)

GRIGSBY PAID TIME-OFF HOURS AND HOLIDAYS

Lack of Authority for Suspension with Pay

On July 16, 2019, Grigsby was placed on administrative leave without pay; however, she continued receiving pay through the April 24, 2020 pay date by using accumulated paid time-off hours and paid holidays, effectively making the suspension with pay.

Furthermore, the Sanitary District issued an official statement on March 27, 2020, which was posted to the Muncie Sanitary District website on April 1, 2020, stating in part: ". . . Grigsby has been on unpaid administrative leave since July 2019, pending the outcome of this investigation. . . ."

The Sanitary District Board Attorney had not issued an opinion on the suspension as required for a suspension to be with pay, as Grigsby continued receiving pay.

Suspension with pay must be supported by the written opinion of the attorney for the unit stating that the suspension is in accordance with all laws, including IC 35-44.1-1-3, and a properly enacted Home Rule ordinance/resolution. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 1)

Lack of Authority for Paid Holidays While on Leave

Grigsby was approved leave per the Family Medical Leave Act (FMLA), which consisted of 12 weeks from July 16, 2019 through October 8, 2019; however, she continued to receive payment for 11 holidays consisting of 88 hours during the period of October 9, 2019 through the April 24, 2020 pay date.

Grigsby's compensation and benefits for paid holidays while on unpaid leave beyond the FMLA period totaled \$4,093.77.

Section 4.3 of the Sanitary District's Personnel Policies Handbook regarding holidays, states in part:

"To be eligible for holiday pay an employee must work the full scheduled work day before and the full scheduled work day after the holiday, and when required the scheduled make up day unless the employee's failure to do so is due to one or more of the following reasons:

- A. Approved vacation, personal leave, jury duty leave of absence, witness leave of absence, temporary military leave of absence of fifteen (15) calendar days or less, or eligible FMLA leave. . . ."

Each unit is responsible for complying with the ordinances, resolutions, and policies it adopts. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 1)

We requested Grigsby reimburse the Sanitary District \$4,093.77 for holidays paid while on unpaid administrative leave. (See Summary of Charges, page 23)

MUNCIE SANITARY DISTRICT
RESULTS AND COMMENTS
(Continued)

Lack of Authority for Payment of Leave Not Earned

Grigsby was paid for use of 48 hours of sick leave from December 2, 2019 through December 9, 2019, and for 48 hours of personal leave from December 10, 2019 through December 17, 2019. Grigsby did not have a leave balance for either types of leave, and she was not eligible to earn such leave due to her placement on unpaid leave at July 16, 2019, and due to the expiration of FMLA status on October 8, 2019.

Grigsby's compensation and benefits paid while on unpaid administrative leave for sick and personal leave used in excess of available balances totaled \$4,368.86.

Section 4.2 of the Sanitary District's Personnel Policies Handbook regarding personal/sick leave states in part: ". . . Employees accrue personal/sick leave benefits during all other paid leaves of absence and unpaid leaves of absence of less than thirty (30) calendar days. . . ."

Each unit is responsible for complying with the ordinances, resolutions, and policies it adopts. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 1)

We requested Grigsby reimburse the Sanitary District \$4,368.86 for the sick and personal leave used in excess of available balances. (See Summary of Charges, page 23)

Lack of Authority for the Removal of Limit on Leave Time Payment

On February 14, 2018, the Sanitary District Board approved Resolution 2018-02, effectively removing the sick bank limit of 960 hours to unlimited hours for executive management. The resolution had not defined executive management, and the resolution was not approved by the legislative board.

Furthermore, per a Personnel Information Form (PI) dated February 14, 2018, the Sanitary District Board authorized the return of 469 hours of paid time-off to Grigsby's sick leave bank. The hours returned were for hours initially forfeited due to exceeding the limit of the 960 hours. The PI indicated the hours returned were for periods dating back to January 2013.

The PI also indicated that a detailed report of hours returned was to be attached; however, no report was attached to allow for the validation of the hours returned, or the authority for the returned hours. A request was made for the documentation, but as of April 24, 2020, the Sanitary District has not provided supporting documentation of these hours.

The resolution had an effective date of February 14, 2018, and did not allow for a retroactive return of forfeited hours. Furthermore, the Common Council had not authorized the leave time as required by Indiana Code 5-10-6-1.

Grigsby was paid for 268.8 hours of extended sick leave over the 960 hour sick leave bank limit while on unpaid administrative leave. Compensation and benefits totaled \$12,715.04 for the 268.8 hours of extended sick leave paid while on unpaid administrative leave.

Indiana Code 5-10-6-1(b) states:

"Employees of the political subdivisions of the state may be granted a vacation with pay, sick leave, paid holidays, and other similar benefits by ordinance of the legislative body of a county, city, town, township, or controlling board of a municipally owned utility, board of directors or regents of a cemetery, or board of trustees of any library district."

MUNCIE SANITARY DISTRICT
RESULTS AND COMMENTS
(Continued)

Indiana Code 36-1-2-9 states in part:

"Legislative body' means the: . . .

(4) common council, for a city other than a consolidated city; . . ."

We requested Grigsby reimburse the Sanitary District \$12,715.04 for the extended sick leave used in excess of limited sick leave bank limit, while on unpaid administrative leave. (See Summary of Charges, page 23)

Summary

The following is a summary of compensation and benefits requested to be repaid to the Sanitary District by Grigsby:

Type	Hours	Rate	Amount	Employer Share	Totals
Leave Paid While on Unpaid Administrative Leave:					
Holidays:					
2019	32.00	\$ 37.96	\$ 1,214.72	\$ 230.08	\$ 1,444.80
2020	<u>56.00</u>	39.77	<u>2,227.12</u>	<u>421.85</u>	<u>2,648.97</u>
Total Holidays Paid	<u>88.00</u>		<u>3,441.84</u>	<u>651.93</u>	<u>4,093.77</u>
Leave Not Earned:					
Personal, 2019	32.00	37.96	1,214.72	230.08	1,444.80
Personal, 2020	16.00	39.77	636.32	120.53	756.85
Sick, 2019	<u>48.00</u>	37.96	<u>1,822.08</u>	<u>345.13</u>	<u>2,167.21</u>
Total Leave Not Earned Paid	<u>96.00</u>		<u>3,673.12</u>	<u>695.74</u>	<u>4,368.86</u>
Leave Paid Beyond Limit:					
Extended Sick	<u>268.80</u>	39.77	<u>10,690.18</u>	<u>2,024.86</u>	<u>12,715.04</u>
Totals	<u><u>452.80</u></u>		<u><u>\$ 17,805.14</u></u>	<u><u>\$ 3,372.53</u></u>	<u><u>\$ 21,177.67</u></u>

GRIGSBY HEALTH INSURANCE PREMIUMS

Grigsby was placed on unpaid leave on July 16, 2019, and resigned her position indicating her last work date would be February 29, 2020. From July 16, 2019 through February 22, 2020, the Sanitary District continued paying health insurance premiums totaling \$12,792.96.

Section 4.6.6(B) of the Sanitary District's Personnel Policies Handbook regarding health benefits states in part:

". . . If an employee chooses not to return to work for reasons other than a continuing serious health condition of the employee or the employee's family member, or a circumstance beyond the employee's control, the District shall require the employee to reimburse the employer the amount it paid for the employee's health insurance premium during the leave period."

MUNCIE SANITARY DISTRICT
RESULTS AND COMMENTS
(Continued)

Pursuant to 29 CFR 825.100(b):

"An employee on FMLA leave is also entitled to have health benefits maintained while on leave as if the employee had continued to work instead of taking the leave. If an employee was paying all or part of the premium payments prior to leave, the employee would continue to pay his or her share during the leave period. The employer may recover its share only if the employee does not return to work for a reason other than the serious health condition of the employee or the employee's covered family member, the serious injury or illness of a covered service member, or another reason beyond the employee's control."

Each unit is responsible for complying with the ordinances, resolutions, and policies it adopts. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 1)

Units are required to comply with all grant agreements, rules, regulations, bulletins, directives, letters, letter rulings, court decisions, and filing requirements concerning reports and other procedural matters of federal and state agencies. Units must file accurate reports required by federal and state agencies. Noncompliance may require corrective action. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 1)

We requested that Grigsby reimburse the Sanitary District for the health insurance premiums paid by the Sanitary District totaling \$12,792.96. (See Summary of Charges, page 23)

SPECIAL INVESTIGATION COSTS

The State of Indiana incurred costs, in the amount of \$26,555.10, due to the special investigation of the compensation and benefits paid by the Sanitary District.

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

We requested that Grigsby reimburse the State of Indiana for special investigation costs in the amount of \$25,601.80. (See Summary of Charges, page 23)

We requested that Evans and Nichols, jointly and severally, reimburse the State of Indiana for special investigation costs in the amount of \$953.30. (See Summary of Charges, page 23)

OFFICIALS' BONDS

The Sanitary District obtained officials' bonds as follows:

Official/Employee	Term	Bond Amount
Joseph Evans	01-01-18 to 12-31-18	\$ 15,000
	01-01-19 to 12-31-19	15,000
Debra Grigsby	01-01-19 to 12-31-19	15,000
	12-31-19 to 12-31-20	15,000

MUNCIE SANITARY DISTRICT
RESULTS AND COMMENTS
(Continued)

TERMINATION OF GRIGSBY

Grigsby submitted a letter of resignation to Smith, President of the Sanitary District Board, dated January 27, 2020, indicating her last date of employment would be February 29, 2020. On February 25, 2020, a Personal Information Form was signed by Smith for Grigsby to be paid a total of \$108,818.67 reflecting 280 hours of vacation time, 1,468.20 hours of over sick leave limit, and 988 hours of extended sick leave hours. The reason given was "Voluntary Quit." A communication from Smith to Mayor Ridenour stated that the City had informed the Sanitary District of the tax consequences of such a large payout at one time, so Grigsby "chose to take the payout in the same manner as she had been doing while on administrative leave."

We find no audit evidence for any payments to be made beyond amounts already paid to Grigsby as all paid leave balances were exhausted by March 3, 2020, as per below:

<u>Type of Leave</u>	<u>Date Exhausted</u>
Vacation	12-01-19
Personal	07-30-19
Sick	05-20-19
Extended Sick	03-03-20

Section 3.16 of the Sanitary District's Personnel Policies Handbook regarding employment termination states in part:

"Termination of employment is an inevitable part of personnel activity within any organization, and many of the reasons for termination are routine. Below are examples of some of the most common circumstances under which employment is terminated:

- **Resignation:** Voluntary employment termination initiated by the employee. Although advance notice is not required, Muncie Sanitary District requests at least a two (2) week notice from the employee. The department head shall determine whether the employee may work out his/her notice.
- **Discharge/Termination:** Involuntary employment termination initiated by the District

...

All accrued, vested benefits that are due and payable at termination will be paid."

Furthermore, Grigsby was arrested on July 16, 2019, which is the same date the Sanitary District placed Grigsby on "Administrative Unpaid Leave," and also the same date the Sanitary District retroactively approved Grigsby's paid FMLA leave to begin. Grigsby was indicted on charges of conspiracy to commit wire fraud, wire fraud, making false statements, and falsification of documents in a federal investigation.

On February 26, 2020, Grigsby signed a plea agreement that was filed with the United States District Court in which she entered a plea of guilty to the charge of conspiracy to commit wire fraud. As stated in part, in the plea agreement ". . . defendant knowingly conspired to devise and participate in a scheme or artifice to defraud, and to obtain money and property . . . and did so knowingly and with intent to defraud . . ."

MUNCIE SANITARY DISTRICT
RESULTS AND COMMENTS
(Continued)

The Sanitary District failed to terminate Grigsby on February 26, 2020, as stated in their personnel policy.

Section 6.5 of the Sanitary District's Personnel Policies Handbook regarding commission of a felony or unlawful act states in part:

". . . Unauthorized time away from work shall be subject to the District's attendance and wage policies. Time spent under arrest or in jail is not considered a valid excuse for missing work. An employee who is cited for an infraction or arrested for any misdemeanor or felony, whether the citation or arrest happened while the employee was on duty or not, may be suspended without pay pending an administrative investigation and/or the disposition of any charges filed against the employee.

The investigation will be used to determine if the accused employee is in violation of the personnel policies and to determine if disciplinary action is warranted, up to and including termination. . . .

Any employee found guilty, admitting guilt, or pleading no contest or *nolo contendere* of/to a felony will be subject to immediate dismissal."

Each unit is responsible for complying with the ordinances, resolutions, and policies it adopts. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 1)

MEDICAL LEAVE PER THE FAMILY MEDICAL LEAVE ACT (FMLA)

The City and Sanitary District failed its duty to perform due diligence in the approval of Grigsby's medical leave pursuant to the Family Medical Leave Act (FMLA).

On July 16, 2019, Grigsby was arrested by United States Marshalls after she was indicted on charges of conspiracy to commit wire fraud, wire fraud, making false statements, and falsification of documents in a federal investigation. She was released from federal custody pending trial later that same day. As part of her conditions of release, Grigsby was ordered to have no contact with any of the victims of the offenses charged against her, which includes the Sanitary District.

Eight days after her arrest on the morning of July 16, 2019, a Personnel Information Form (PI) signed on July 24, 2019, by Smith, the Sanitary District Board President, placed Grigsby on "Administrative Leave without pay" effective on July 16, 2019.

While on administrative leave without pay, an FMLA Request Form was prepared in which Grigsby requested FMLA on August 12, 2019, being 27 days after her arrest and being placed on administrative leave without pay.

The FMLA Request Form was signed by a Sanitary District employee on Grigsby's behalf. The reason provided was "Serious Medical Condition of Employee" with the date requesting leave to begin initially designated as May 20, 2019, but changed by the Sanitary District employee who signed the FMLA Request Form to July 16, 2019. Per an email confirmation, the date change was authorized by Grigsby per the same employee who signed the FMLA Request Form on Grigsby's behalf.

MUNCIE SANITARY DISTRICT
RESULTS AND COMMENTS
(Continued)

The FMLA Request Form used by the Sanitary District indicated that when the reason "Serious Medical Condition of Employee" was given, United States Department of Labor Form WH380E was required.

Form WH380E is a U.S. Department of Labor Certification of Health Care Provider for Employee's Serious Health Condition. Section III of the Form WH380E is completed by the health care provider to document the date the condition began and other relevant medical facts, including whether the condition would limit the employee's ability to perform his/her job functions.

An affidavit signed by the current Personnel Director noted the following:

- Grigsby was granted FMLA leave on October 7, 2019, for the period of July 16, 2019 to October 8, 2019.
- The Sanitary District obtained a medical certification from Grigsby via Form WH380E, which is on file with the City.
- The Form WH380E on file with the City was signed by Grigsby's licensed medical provider on October 3, 2019, certifying FMLA for Grigsby from July 16, 2019 to October 8, 2019.
- Part A, line number 3 of the Form WH380E on file with the City in response to the question: "Is the employee unable to perform any of his/her job functions due to the condition: "The reply by Grigsby's health care provider was: "No."

Neither the Sanitary District Officials nor City Officials performed due diligence by denial of the FMLA claim or pursuing a second opinion to validate or refute the claim. The medical certification was not made until October 3, 2019, just five (5) days prior to end of the FMLA period, and the medical certification contained a statement by Grigsby's licensed medical provider that Grigsby would not be unable to perform her job functions due to her condition.

29 USC 28 Section 2613 states in part:

"(a) In general

An employer may require that a request for leave under subparagraph (C) or (D) of paragraph (1) or paragraph (3) of section 2612(a) of this title be supported by a certification issued by the health care provider of the eligible employee or of the son, daughter, spouse, or parent of the employee, or of the next of kin of an individual in the case of leave taken under such paragraph (3), as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the employer.

(b) Sufficient certification

Certification provided under subsection (a) shall be sufficient if it states—

- (1) the date on which the serious health condition commenced;
- (2) the probable duration of the condition;
- (3) the appropriate medical facts within the knowledge of the health care provider regarding the condition;

MUNCIE SANITARY DISTRICT
RESULTS AND COMMENTS
(Continued)

- (4) (A) for purposes of leave under section 2612(a)(1)(C) of this title, a statement that the eligible employee is needed to care for the son, daughter, spouse, or parent and an estimate of the amount of time that such employee is needed to care for the son, daughter, spouse, or parent; and (B) for purposes of leave under section 2612(a)(1)(D) of this title, a statement that the employee is unable to perform the functions of the position of the employee; . . .

(c) Second opinion

(1) In general

In any case in which the employer has reason to doubt the validity of the certification provided under subsection (a) for leave under subparagraph (C) or (D) of section 2612(a)(1) of this title, the employer may require, at the expense of the employer, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified under subsection (b) for such leave. . . ."

29 CFR 825.112(a) states in part:

"Employers covered by FMLA are required to grant leave to eligible employees: . . .

- (4) Because of a serious health condition that makes the employee unable to perform the functions of the employee's job. . . ."

Units are required to comply with all grant agreements, rules, regulations, bulletins, directives, letters, letter rulings, court decisions, and filing requirements concerning reports and other procedural matters of federal and state agencies. Units must file accurate reports required by federal and state agencies. Noncompliance may require corrective action. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 1)

MATERIALITY THRESHOLD POLICY

The City and Sanitary District had not established a Materiality Threshold Policy as required by the State Examiner.

State Examiner Directive 2015-6 states in part:

"In general, each political subdivision must develop their own policy on materiality because the causes of irregular variances, losses, shortages, and thefts are as broad and varied as the political subdivisions in which the incidents occur. . . .

Political subdivisions must recognize that variances, losses, shortages, and thefts may occur. If an incident occurs, it is imperative that the political subdivision have a policy in place that outlines the steps to be taken. Such a policy must include a materiality threshold at which point the political subdivision reports incidents to the State Board of Accounts.

The policy must be detailed, and it is essential that materiality thresholds distinguish between incidents involving cash and other types of assets. The policy needs to address maintenance of documentation and resolution of incidents that do not meet the materiality threshold.

MUNCIE SANITARY DISTRICT
RESULTS AND COMMENTS
(Continued)

The policy must also consider Ind. Code § 5-11-1-27(l), which requires public officials who have actual knowledge of or reasonable cause to believe that there has been a misappropriation of public funds to immediately send written notice of the misappropriation to the State Board of Accounts and the prosecuting attorney. There is *no* materiality threshold applicable to Ind. Code § 5-11-1-27(l). Thus, whenever a political subdivision has actual knowledge or is reasonably certain that a misappropriation of public funds has occurred (regardless of the dollar amount), the political subdivision must send written notice of the misappropriation to the State Board of Accounts and the local prosecuting attorney. Misappropriation occurs when an employee or in-house contractor of the political subdivision wrongly takes or embezzles public funds. When there is a known misappropriation or embezzlement of public funds by an internal actor, materiality is irrelevant. Indiana law requires the political subdivision to report the activity to the State Board of Accounts and the local prosecutor. Ind. Code § 5-11-1-27(l).

If a political subdivision does not develop a policy on materiality, then the threshold is \$0.00 and the political subdivision is required to report *all* irregular variances, losses, shortages, and thefts to the State Board of Accounts. . . ."

INTERNAL CONTROL DEFICIENCIES

There were insufficient internal controls in place for ensuring compliance with the Family Medical Leave Act (FMLA), as well as with personnel policies of the City and Sanitary District. The City and Sanitary District had not established controls to ensure compliance with FMLA requirements, protocols, and approvals. The City did not have a system of internal controls in place to ensure that policies regarding paid leave and similar benefits proposed by the Sanitary District were in compliance with policies properly adopted by the City Common Council, the legislative body of the City. Furthermore, neither the Sanitary District nor the City had a system of internal controls in place to properly monitor that the earnings, uses, and balances of leave time were in compliance with properly adopted paid leave policies.

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. . . ."

MUNCIE SANITARY DISTRICT
EXIT CONFERENCE

The contents of this report were discussed on June 10, 2020, with William Smith, President of the Sanitary District Board/Interim Sanitary District Administrator; Mike Cline, Sanitary District Board member; Dan Ridenour, Mayor; Trent Conway, City Controller; Nancy Larson, Human Resources Director; Ralph Smith, Common Council member; Jeff Robinson, Common Council member; Aaron Clark, Common Council member; Richard Ivy, Common Council member; and Troy Ingram, Common Council member.

OFFICIAL RESPONSE

from Mayor Dan Ridenour, City of Muncie

Re: Special Investigation Report of Muncie Sanitary District

Results of Investigation:

Item- Sanitary District Board Members Paid Time Off Hours

Response- I agree with the findings of the SBOA. The MSD Board had no authority to increase their paid time off.

Item- Grigsby Paid Time Off Hours and Holidays

Response- I agree with the findings of the SBOA. The MSD Board did not issue a legal opinion as required by IC 35-44, 1-1-3. Also the City Council was not informed and therefor did not approve Resolution 2018-02 which the MSD Board approved on 2/14/18. Indiana Code 5-10-6-1 requires City Council to approve the retroactive return of forfeited hours.

Item- Grigsby Health Insurance Premiums

Response- I agree with the findings of the SBOA. Per Section 4.6.6 (B) of the MSD handbook that states the rules for health premiums. The MSD Board did not follow those guidelines.

Item- Special Investigation Costs

Response- I agree with the findings of the SBOA. Grigsby, Nichols, Evans and MSD should reimburse the state of Indiana for the investigation costs.

Item- Official Bonds

Response- I agree with the findings of the SBOA.

Item- Termination of Grigsby

Response- The City of Muncie payroll employee was asked to calculate an estimated payout for Grigsby by a MSD employee. The City of Muncie Payroll employee was not supplied with any official paperwork at that time. She was told to simply see what the payout would be.

Further, the Personnel Department, and City of Muncie were not provided with the resignation letter (later to find it was dated 1/27/20) until after two formal requests for any Grigsby paperwork. One request was made on 4/1/20 by the Personnel Director in an email. The other as a demand letter dated 4/15/20 by the Mayor sent by email, and mail. The resignation letter was then provided to the City of Muncie by the MSD Board President on 4/22/20. The Personnel Department and City of Muncie were not provided with the PI form mentioned (later to find it was dated 2/25/20) until after the same two requests, an email on 4/1/20 by the Personnel Director and a demand letter by the Mayor dated

4/15/20. The PI form referenced in the Investigation was provided to the City of Muncie on 4/22/20 by the Muncie Sanitary District. Without any official forms from the MSD Administration being sent to the Personnel or Mayor's office, we were unaware of Grigsby's resignation until after the MSD's own website indicated she was no longer employed which prompted the demand letters. This failure to provide documentation to Personnel resulted in Grigsby being paid. We cooperated fully and communicated regularly with the SBOA in order to help investigate and complete the report on the activities of the Muncie Sanitary District.

Item- Medical Leave per the Family Medical Leave Act (FMLA)

Response- I agree with the findings of the SBOA. Since the new administration took office on 1/1/20, we have been revamping the procedures regarding FMLA and other HR procedures. The City of Muncie has cooperated fully with every facet or request made by the SBOA during this investigation in our effort to resolve the MSD issues. In our efforts since 1/1/20 to improve accountability, the City of Muncie has begun storing personnel forms, review forms, and more documents electronically. This step helps to make the appropriate and correct forms more easily accessible by supervisors. This action by the City of Muncie and other steps installed will help to limit our risk in future years.

Item- Material Threshold

Response- I agree with the findings of the SBOA. Since taking office on 1/1/20 the new administration has cooperated fully with this SBOA investigation of Muncie Sanitary District. We have reported to SBOA any questioned activity and provided all documentation requested. We will develop a Materiality Threshold Policy, submit it to the council for approval and then submit a copy to the SBOA for review by 10/31/2020.

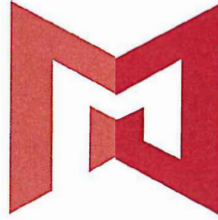
Item- Internal Control Deficiency

Response- I agree with the findings of the SBOA. Since taking office on 1/1/20 the new administration has cooperated fully with the SBOA investigation of the Muncie Sanitary District. We have noticed inefficiencies with internal controls prior to this Exit Interview and had already begun to rectify those inefficiencies. We have put in new policy and procedures to help improve operations of the City of Muncie including ordinances on training or quotes (purchasing), plus adjusted personnel reviews, procedures and more. We intend to fully comply with the Internal Control Standards noted in Indiana Code 5-11-1-27(e).

Summary

The City of Muncie appreciates the opportunity to hear the SBOA report on the Muncie Sanitary District investigation and help play our small part in providing assistance and information. We accept and understand our role with internal controls. We have already begun the process of putting in place standard operating procedures that have been previously lacking. Our expectation is that these procedures which have begun along with instituting additional SBOA recommendations will set up Muncie for future years of compliance.


Dan Ridenour, Mayor of Muncie



McKINNEY & MALAPIT LAW

July 1, 2020

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

VIA EMAIL: officialresponse@sboa.in.gov

Re: SUPPLEMENTAL RESPONSE TO SPECIAL INVESTIGATION REPORT
Entity: Muncie Sanitary District
Period Examined: January 1, 2018 – April 24, 2020

To Whom It May Concern:

Please be aware that McKinney & Malapit Law represents Muncie Sanitary District (“MSD”) and assisted MSD in drafting this formal supplemental response to the Indiana State Board of Accounts’ (“SBOA”) aforementioned Special Investigation Report (“Report”).

As MSD mentioned in its initial response, SBOA’s position on many of the allegations made in their Report represent a radical departure from their previous audits over the last twenty (20) years. In fact, many policies and procedures that SBOA took issue with have been longstanding policies which have never been previously complained of by SBOA.

In support of their contention that MSD Board Members are not full-time employees, SBOA tries to weaponize a portion of an offhand comment by William Smith, and use it against the MSD Board Members. But MSD continues to assert that SBOA’s argument that MSD Board Members are not full-time employees is inconsistent with SBOA’s interpretation of other benefits and attributes related to the MSD Board Members employment. These benefits include health insurance, retirement benefits, use of the health clinic, telephones, and others. In further support of MSD’s position, time sheets are maintained by the City of Muncie Controller’s office, and a sample copy is attached to this supplementary response. Without this new, more restrictive definition of the MSD Board Member employment status, SBOA’s position that MSD Board

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Members are unable to earn, use, or donate paid leave time crumbs. In fact, MSD Board Members have a longstanding policy of doing just that, with no prior complaint from SBOA. All employees are able to voluntarily donate their accumulated leave time to assist an employee in need. Any donated hours are deducted from the remaining leave time available and credited appropriately by the City of Muncie Controller's Office. SBOA has never previously complained of this practice.

SBOA also argues that Nikki Grigsby ("Grigsby") was "effectively" on paid leave because while she was on unpaid leave, she was continuing to be paid based on her accumulated paid time off (PTO) and holiday time. The MSD Personnel Policies Handbook ("Handbook") does not define paid leave time to include "effectively" paid leave time, as SBOA argues, and it has been MSD's policy to pay employees who were on unpaid leave for their accumulated leave time and holiday time during that period of time. Nothing in the Handbook prohibits this practice, nor does the Handbook prohibit MSD Board Members or other employees from donating their leave time to assist an employee who is currently on unpaid leave. Nevertheless, Attorney David Swider provided a letter to the Board, outlining the legal support for this action.

SBOA also argues that MSD failed to conduct an additional investigation into Grigsby's request for leave pursuant to the Family Medical Leave Act (FMLA). This additional investigation would not be typical or customary as a part of MSD's processes. Generally, if the necessary form(s) are filled out, MSD will accept them and not require additional medical evaluations, out of respect for the employee's medical privacy and in observance of the employee's state and federal rights. These forms (as well as the calculation of leave time) are kept and processed in the City of Muncie Controller's Office and MSD does not have direct control over these records.

Due to the unique position of MSD as a politically independent subdivision (within the executive branch), Muncie City Council is restrained from exercising broad oversight as contemplated within the SBOA's most recent report. In fact, the only oversight that Muncie City Council has over MSD is to review and approve the tax portion of their budget.

SBOA argues that Grigsby should reimburse MSD for any health insurance premiums incurred during her leave period. However, the Handbook only requires that MSD require the employee to reimburse MSD's share of the health insurance premiums "only if the employee does not return to work for a reason other than the serious health condition of the employee or the employee's covered family member, the serious injury or illness of a covered servicemember, or another reason beyond the employee's control." This broad language affords MSD the discretion to determine when it is best to require the return of this portion of the health insurance premium. When conducting its investigation, the SBOA may not simply substitute its judgment for that of the MSD Board Members.

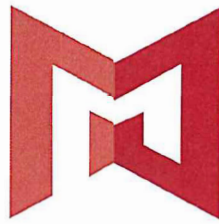
The recommendations made within SBOA's report represent a radical departure from prior reports made by SBOA during the same time period. Accordingly, MSD objects to the costs of the investigations being assigned to any employee or MSD Board Member.

Contrary to the implications contained in the SBOA report, MSD's treatment of Grigsby's requests were ordinary and customary, and in no way deviated from its standard procedure, which has not been challenged by the SBOA in the last twenty years. Out of an abundance of caution, MSD will investigate instituting a materiality threshold for losses and will also review their internal control measures to ensure proper measures are in place when instituting (paid and unpaid) leave, in processing FMLA requests, and other similar procedures.

Yours truly,



Mark R. McKinney



McKINNEY & MALAPIT LAW

June 19, 2020

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

VIA EMAIL: officialresponse@sboa.in.gov

***Re: OFFICIAL RESPONSE TO SPECIAL INVESTIGATION REPORT
Entity: Muncie Sanitary District
Period Examined: January 1, 2018 – April 24, 2020***

To Whom It May Concern:

Please be aware that McKinney & Malapit Law represents Muncie Sanitary District ("MSD") and assisted MSD in drafting this formal response to the Indiana State Board of Accounts' ("SBOA") aforementioned Special Investigation Report ("Report"). After our initial review of your Report, we requested more than ten (10) days to respond to the allegations contained in the eighteen (18) page Report but have not yet received a response to our request. As a result, we will provide our preliminary response below and intend to supplement our response at a later time.

SBOA's position on many of the allegations made in their Report is a radical departure from their previous audits over the last twenty (20) years. In fact, many policies and procedures that SBOA took issue with in their Report have been longstanding policies which have never been previously complained or addressed by SBOA.

SBOA asserts that MSD Board Members are not full-time employees according to the MSD Personnel Policies Handbook ("Handbook") and therefore the MSD Board Members are not entitled to receive benefits. However, SBOA does not take issue with Board Members qualifying for health insurance coverage, Public Employee Retirement Fund (PERF), and other benefits that part-time employees do not qualify for. It is a reasonable interpretation of the Handbook, when read as a whole, to interpret salaried employees (such as Board Members) to be full-time

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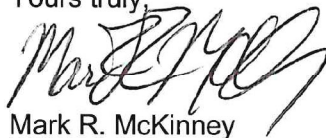
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employees. SBOA ignores these inconsistencies in their Report and argues that Board Members do not qualify to earn paid leave time in an apparent attempt to drive their intended result. SBOA has never, in previous audits, argued that Board Members are unable to earn benefits. Contrary to SBOA's assertion, Board Members qualifying for benefits is entirely consistent with the Handbook as well as the practices that have actually been in effect over the previous twenty (20) years.

SBOA also mischaracterizes the Muncie City Council's role in the oversight of MSD's policies and procedures in their Report. MSD's Handbook was adopted directly by MSD and has been amended with the same formalities. Indiana law does not grant Muncie City Council jurisdiction to amend or create MSD policies. Muncie City Council's only authority over MSD is to review and approve a portion of MSD's budget. They have no authority to review or revise MSD policies and procedures.

MSD has a longstanding policy permitting Board Members to qualify for benefits and Board Members have taken advantage of that policy by occasionally donating excess paid leave time to employees. SBOA has never complained of this practice in their previous audits and their newly adopted position is inconsistent with other policies and practices currently in effect. As a result, MSD takes issue with the recommendations of SBOA and objects to the relief that they seek.

Yours truly,

A handwritten signature in black ink, appearing to read "Mark R. McKinney", written in a cursive style.

Mark R. McKinney

MUNCIE SANITARY DISTRICT
SUMMARY OF CHARGES
(Due to Malfeasance, Misfeasance, or Nonfeasance)

	<u>Charges</u>	<u>Credits</u>	<u>Balance Due</u>
Debra Grigsby, former Sanitary District Administrator:			
Grigsby Paid Time-off Hours and Holidays, pages 6 through 8:			
Paid Holidays While on Leave	\$ 4,093.77	\$ -	\$ 4,093.77
Personal Leave Used, Not Earned	2,201.65	-	2,201.65
Sick Leave Used, Not Earned	2,167.21	-	2,167.21
Extended Sick Leave Used, Not Earned	12,715.04	-	12,715.04
Grigsby Health Insurance Premiums, pages 8 and 9	12,792.96	-	12,792.96
Special Investigation Costs, page 9	<u>25,601.80</u>	<u>-</u>	<u>25,601.80</u>
Totals	<u>\$ 59,572.43</u>	<u>\$ -</u>	<u>\$ 59,572.43</u>
Joseph Evans, Sanitary District Board member/ Angelica Nichols, Muncie Sanitary District Employee:			
Sanitary District Board Members Paid			
Time-Off Hours, pages 3 through 6:			
Use of Donated Extended Sick Time	\$ 4,876.55	\$ -	\$ 4,876.55
Special Investigation Costs, page 9	<u>953.30</u>	<u>-</u>	<u>953.30</u>
Totals	<u>\$ 5,829.85</u>	<u>\$ -</u>	<u>\$ 5,829.85</u>

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

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AFFIDAVIT

STATE OF INDIANA)

Huntington COUNTY)

I, Mary Jane Bartrom, Field Examiner, being duly sworn on my oath, state that the foregoing report based on the official records of the Muncie Sanitary District, Delaware County, Indiana, for the period from January 1, 2018 to April 24, 2020, is true and correct to the best of my knowledge and belief.

Mary Jane Bartrom
Field Examiner

Subscribed and sworn to before me this 10 day of August, 2020

Cheryl Ann Hardin
Notary Public

My Commission Expires: September 28 2026

County of Residence: Huntington

