

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

SPECIAL COMPLIANCE REPORT
OF
COUNTY AUDITOR
ST. JOSEPH COUNTY, INDIANA
January 1, 2019 to December 31, 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 ST. JOSEPH COUNTY, INDIANA

This is a special compliance report for the County Auditor, St. Joseph County (County), for the period January 1, 2019 to December 31, 2019, 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 leaf collection contract. 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.

The 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

May 19, 2020

COUNTY AUDITOR
ST. JOSEPH COUNTY
RESULTS AND COMMENTS

ADVANCE PAYMENT

On June 19, 2019, the County paid \$332,000 to a vendor as part of a \$1,195,000 leaf collection contract. Per the invoices submitted for payment, leaf collections did not begin until October 2019.

Compensation and any other payments for goods and services must not be paid in advance of receipt of the goods or services unless specifically authorized by law. Payments made for goods or services which are not received may be the personal obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines Manual for County Auditors of Indiana, Chapter 1)

INTERNAL CONTROLS

The County had not established controls to ensure vendors were not paid in advance of services received.

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. . . ."

OFFICIAL RESPONSE

**INDIANA
STATE BOARD OF ACCOUNTS**

IN RE:

ST. JOSEPH COUNTY, INDIANA.

**SPECIAL COMPLIANCE REPORT OF
COUNTY AUDITOR**

January 1, 2019 to December 31, 2019

OFFICIAL RESPONSE TO SPECIAL COMPLIANCE REPORT

St. Joseph County, Indiana, by counsel, Jamie C. Woods, the County Attorney, for its Response to Special Compliance report, states as follows:

The St. Joseph County Auditor received its special compliance report for the period January 1, 2019 to December 31, 2019 pertaining to records associated with the leaf collection contract (the "Report"). The St. Joseph County Auditor (the "Auditor") and St. Joseph County, Indiana (the "County") object to the findings in the Report.

The items listed in the Report listed two "identified reportable instances of noncompliance" with relation to the leaf collection contract records. Specifically, the Report found an instance of noncompliance under the heading of "Advance Payment", and under the heading of "Internal Controls". Both of these alleged "noncompliance" instances related to advance payments of leaf pickup services.

According to the Report, the State Board of Accounts has taken the position that "Compensation and any other payments for goods and services must not be paid in advance of receipt of the goods or services unless specifically authorized by law. Payments made for goods or services which are not received may be the personal obligation of the responsible official or employee." The Report cites to only the "Accounting and Uniform Compliance Guidelines Manual for County Auditors of Indiana, Chapter 1" as support for this statement. There is no citation to statutory authority for this statement in the Report.

A review of the "Accounting and Uniform Compliance Guidelines Manual for County Auditors of Indiana, Chapter 1" (the "Manual") finds the statements in the Report verbatim listed at page 3. However, the Manual does not provide statutory authority for this assertion. Nor does it provide citation to regulatory authority providing a basis for this statement.

A review of the Indiana Code does not provide any statutory basis for the application of this principle to the County. Ind. Code § 4-13-2-20, applicable to *state agencies*, which the County is not (the County is a political subdivision, rather than a state agency), states at subsection (a) that "Except as otherwise provided in this section or IC 12-8-10-7, payment for any services, supplies, materials, or equipment shall not be paid from any fund or state money in advance of receipt of such services, supplies, materials, or equipment by the state . . ." Clearly, the statement in the Manual is accurate as it pertains to state agencies. However, this statute

does not provide the authority for the application of this principle against a political subdivision such as the County.

There is no statutory authority on which the Report's assertion could be based as applied against the County rather than a state agency. The County has reviewed the materials referenced in the email from Michelle Janosky to Mary J. Bartrom of June 8, 2020, purporting to explain the authority which the State Board of Accounts has used in order to reach its conclusions in the Report, as there is clearly no statutory authority barring political subdivisions from the use of advance payments. This email references three Indiana statutes which appear to be cited for the purposes of justifying the findings in the Report.

The first statute cited, Ind. Code § 5-11-10-1.6, is simply irrelevant to the kind of advance payments at issue here. With regards to the leaf contract, a fully itemized invoice or bill was presented for the claim pursuant to the contract, was approved by the appropriate officer or person relating to the leaf pickup services, was filed with the fiscal officer of the County, who audited and certified that the invoice or bill was true and correct, and the payment was allowed by the Board of Commissioners, the appropriate body to take such action. That is all that is required by this statute. There is a subparagraph that makes reference to various other irrelevant situations, such as meal expense advances and specific spending for a school corporation under a particular fund pertaining to laboratory equipment. None of these prohibit the use of advance payments under a contract for services in which the contractor providing services has significant costly preparation in order to provide the services, which was the situation with the leaf contract.

The other two Indiana statutes cited by Ms. Janosky in the June 8, 2020 email are Ind. Code § 5-11-1-24 and Ind. Code § 5-11-5-1.5. These statutes are inapplicable to the situation here for similar reasons. Ind. Code § 5-11-1-24 allows the State Board of Accounts to “establish in writing uniform compliance guidelines” that “include the standards that an entity must observe to avoid a finding that is critical of the audited entity for a reason other than the audited entity’s failure to comply with a specific law”. The State Board of Accounts’ position seems to be that this statute gives it the authority to create new, substantive law that restricts the actual use of funds by political subdivisions beyond those created by statute and regulation. This cannot be the case, as it would provide a state agency with essentially pure lawmaking power with no oversight or right of appeal or judicial review. The reference to “standards that an entity must observe” therefore must give the State Board of Accounts the ability to regulate the *process* by which funds are expended, i.e., entities must use certain forms, observe certain internal control procedures, follow certain accounting practices, follow certain procedures for authorization of expenditures, etc. Reading this statute to give the State Board of Accounts the authority to regulate whether certain kinds of expenditures are allowed at all (i.e., advance payments under contracts) for entities under Home Rule when there is no statutory authority for such regulation would be a gross overreach of agency power.

The Manual, when discussing substantive law and rules as opposed to procedural ones, must be similar to the bulletins issued by the State Board of Accounts to various government entities, and therefore “is not law”. *State of Indiana, ex. Rel. Garrett Blad, on behalf of the taxpayers of St. Joseph County v. St. Joseph County Board of Commissioners Dave Thomas*,

Andrew T. Kostielney and Deborah A. Fleming, St. Joseph Circuit Court, 71C01-1810-MI-000634 at page 4 (March 28, 2019) (a copy of which is attached as Exhibit “A”). The Manual, like the bulletins, may provide “sound practical advice to counties even if such advice is not actually rooted in statute or case law” when discussing substantive law and rules as opposed to procedural ones. *Id.* The Manual’s exhortation against advance payments may be such “sound practical advice”, but when it comes to political subdivisions which are not state agencies, it is “not actually rooted in statute or case law”. It therefore cannot be enforced against the County in this manner. The assertion by State Board of Accounts that it can do so is an attempt to broaden its lawmaking and rulemaking authority beyond that allowed by the plain wording of its authorizing statutes.

In short, the Report attempts to enforce against the County a rule which is statutorily applied only to state agencies, which the County is not, under the theory that its Uniform Compliance Guidelines may make substantive law, which it does not have the authority to do. Both the “Advance Payment” and “Internal Control” alleged “noncompliance” instances commit this same error, as both are based upon the faulty assumption that the rule against advance payments applies against the County. The Report’s findings are therefore incorrect and should be withdrawn.

Additionally, the facts of the situation do not show a violation of the Manual’s prohibition on “Advance Payments”, even if such is enforceable. The Manual states: “Compensation and any other payments for goods and services must not be paid in advance of receipt of the goods or services unless specifically authorized by law. Payments made for goods or services which are not received may be the personal obligation of the responsible official or employee.” The Report alleges that the first payment to St. Joseph County Recycling under the leaf pickup contract, specified to be paid on execution of the contract, violates this prohibition. This is not the case.

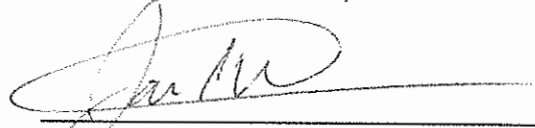
The leaf pickup contract for 2019 (the “Contract”) is a contract whereby the County purchased limited leaf pickup services from St. Joseph County Recycling (“SJCR”). Part and parcel of that leaf pickup services is the provision of tools and equipment and the acquisition of rights to dispose of said leaves. The payment to SJCR upon execution of the Contract was intended to be used for such provision and acquisition. The first payment under the Contract, upon its execution, was not “in advance of receipt of the goods or services”; rather, upon receiving the first payment under the Contract (on execution), SJCR had already provided the County the initial service of finding and determining costs of tools, equipment, and disposal sites necessary to go forward with leaf collection (without which the leaf collection could not happen). The money paid to SJCR on execution of the Contract was then used by SJCR to go forward with the physical acquisition of said tools, equipment, and disposal sites.

As described above, the prohibition on advance payments asserted by the State Board of Accounts does not apply to political subdivisions such as the County. However, even if it did, the County did not make such an “advance payment”; rather, the first payment under the Contract was made in exchange for preliminary preparation services integral and necessary to the

rest of the leaf pickup services provided during the rest of the term of the Contract. The Report's findings should therefore be withdrawn.

Respectfully submitted,

THORNE • GRODNIK, LLP

A handwritten signature in black ink, appearing to read "Jamie C. Woods", is written over a horizontal line.

Jamie C. Woods, Esq. (#21879-79)
420 Lincolnway West
Mishawaka, Indiana 46544
(574) 256-5660 / FAX (574) 256-5137
St. Joseph County Attorney

INDIANA STATE BOARD OF ACCOUNTS COMMENT ON THE OFFICIAL RESPONSE

The Indiana State Board of Accounts provides this comment to the Official Response for the purpose of clarifying its authority to establish uniform compliance guidelines and to report noncompliance with the established uniform compliance guidelines under Indiana Code 5-11-1 and Indiana Code 5-11-5.

In Indiana Code 5-11-1-9, the Indiana State Board of Accounts is charged with examining all accounts and all financial affairs of every audited entity. As a part of that examination, the Indiana State Board of Accounts must make inquiry as to the financial condition and resources of each audited entity; whether the laws of the state and the uniform compliance guidelines of the Indiana State Board of Accounts have been complied with; and the methods and accuracy of the accounts and reports of the person examined.

The authority for the Indiana State Board of Accounts to establish uniform compliance guidelines is found in Indiana Code 5-11-1-24(a), which requires the Indiana State Board of Accounts to establish in writing uniform compliance guidelines for the examination and reports. These uniform compliance guidelines must include the standards that an entity must observe to avoid a finding that is critical of the audited entity for a reason other than the audited entity's failure to comply with a specific law. The Indiana State Board of Accounts distributes uniform compliance guidelines to all entities in the form of manuals, bulletins, and directives.

Whenever an examination is made, the Indiana State Board of Accounts must prepare a report of the examination pursuant to Indiana Code 5-11-5-1, including a list of findings. Any finding that is critical of an examined entity must be based on failure of the entity to observe a uniform compliance guideline established under Indiana Code 5-11-1-24 or failure of the entity to comply with a specific law.

To promote government accountability and transparency, the Indiana State Board of Accounts is charged in Indiana Code 5-11-1-27 with defining the acceptable minimum level of internal control standards and internal control procedures for internal control systems of political subdivisions. These minimum internal control standards have been published by the Indiana State Board of Accounts as uniform compliance guidelines in the *Indiana Uniform Internal Control Standards for Indiana Political Subdivisions* in accordance with Indiana Code 5-11-1-24 and Indiana Code 5-11-1-27. According to this publication, the purpose of the internal control process is to provide reasonable assurance that the mission and objectives of an organization will be achieved. A system of sufficient internal control will promote compliance with laws and regulations, including Indiana State Board of Accounts uniform compliance guidelines. According to the compliance report, St. Joseph County had not established internal controls to address the compliance objective of the Indiana State Board of Accounts uniform compliance guideline regarding advance payments.

In conclusion, the Indiana State Board of Accounts has been granted the statutory authority to establish uniform compliance guidelines and to report noncompliance with such uniform compliance guidelines pursuant to the provisions in Indiana Code 5-11-1 and 5-11-5. Within the scope of its authority, the Indiana State Board of Accounts established a uniform compliance guideline regarding advance payments, distributed the uniform compliance guideline to counties as part of the *Accounting and Uniform Compliance Guidelines Manual for County Auditors of Indiana*, and reported noncompliance with the advance payment uniform compliance guideline in the examination report. Also within the scope of its authority, the Indiana State Board of Accounts defined the acceptable minimum level of internal control standards, distributed those standards to counties in the *Indiana Uniform Internal Control Standards for Indiana Political Subdivisions*, and reported noncompliance with the minimum level of internal control standards in the examination report.

COUNTY AUDITOR
ST. JOSEPH COUNTY
EXIT CONFERENCE

The contents of this report were discussed on June 8, 2020, with Michael J. Hamann, County Auditor, and Rafael Morton, President of the County Council.