

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

SPECIAL INVESTIGATION REPORT  
OF

CLINTON COUNTY SHERIFF'S OFFICE  
JAIL COMMISSARY  
CLINTON COUNTY, INDIANA

January 1, 2019 to September 30, 2021



**FILED**  
11/23/2021



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**STATE OF INDIANA**  
AN EQUAL OPPORTUNITY EMPLOYER

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TO: THE OFFICIALS OF CLINTON COUNTY, INDIANA

This is a special investigation report for the Clinton County Sheriff's Office (Sheriff's Office), for the period of January 1, 2019 to September 30, 2021, and is in addition to any other report for the County, including the Sheriff's Office, as required under Indiana Code 5-11-1. All reports pertaining to the County, including the Sheriff's Office, 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 the Sheriff's Office, with a concentration on the Jail Commissary and Leonne, LLC. 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

September 30, 2021

CLINTON COUNTY SHERIFF'S OFFICE  
JAIL COMMISSARY  
RESULTS AND COMMENTS

**BACKGROUND**

The Indiana State Board of Accounts received a complaint regarding Clinton County Sheriff Richard Kelly's use of jail commissary funds. One specific concern involved payments totaling \$64,000 to Leonne, LLC, (Leonne), which the complainant believed to be a CPA firm.

We examined documents and conducted interviews related to the operations of the Clinton County Sheriff's Office (CCSO) and examined associated financial records for the period beginning January 1, 2018 through September 30, 2021. We also examined official documents related to the business organization and bank statements for Leonne for the period beginning November 27, 2018 through September 30, 2021. The following are the results of our investigation.

**UNAUTHORIZED PAYMENTS, CONFLICT OF INTEREST,  
AND THE CLINTON COUNTY NEPOTISM POLICY**

***Unauthorized Payments - Commissary Compensation Not Authorized by County Officials***

Checks were issued from the CCSO jail commissary funds totaling \$190,916.61 to Leonne and \$32,967.92 to Ashley Kelly from January 1, 2019 to September 30, 2021, for 50 percent of commissary profit on merchandise sales, with the remaining 50 percent of the profit being retained in the jail commissary fund for use by the Sheriff in accordance with Indiana Code 36-8-10-21(d). As of the date of this report, \$28,718.04 of the \$32,967.92 of checks issued to Ashley Kelly have been presented for payment and verified as deposited.

Supporting documentation for the above checks were "invoices" printed by the CCSO Records Clerk that detailed commissary profit on merchandise sold, and contained handwritten notes made by the Records Clerk that calculated 50 percent of that profit amount. This calculated amount was paid to either Leonne or Ashley Kelly.

In order to substantiate these payments, on February 3, 2021, we requested Ashley Kelly provide the contract for commissary services. Ashley Kelly provided a copy of the contract for commissary services between Nancy Ward and Sheriff Jeffrey Ward, dated November 6, 2017, to which Ashley Kelly was not a party. On March 2, 2021, an unsigned and incomplete (with regard to an effective date) commissary services contract was presented to the Clinton County attorney, which referenced the Sheriff's Office and Ashley Kelly as the contracted parties. However, this contract was not signed by either Sheriff Richard Kelly or Ashley Kelly, nor was it signed by a member of the Board of County Commissioners. As of September 30, 2021, this proposed contract, or an amended version, had not been signed by any of the parties to any proposed contract.

Leonne is an Indiana based limited liability corporation established on November 27, 2018, which was approximately two months prior to Sheriff Richard Kelly taking office. Leonne is owned and operated by its two members, Richard Kelly and Ashley Kelly. Ashley Kelly served as the full-time jail matron by the appointment of Sheriff Richard Kelly. Sheriff Richard Kelly and Matron Ashley Kelly were paid from the County General Fund, and the associated compensation for the Sheriff and Matron positions were included in the County's salary ordinances, which were approved by the County Council. However, none of the compensation paid to Ashley Kelly via Leonne, or to Ashley Kelly from the jail commissary fund, was included in the County's salary ordinance or in any labor contract authorized by the County Council.

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Indiana Code 36-2-16-4 states in part:

"Each of the following county officers is entitled to appoint one (1) first or chief deputy, and also may appoint the number of other full-time or part-time deputies and employees authorized by the county fiscal body: . . .

(4) The county sheriff."

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

Payments for services provided by an organization must go directly to the organization and not to an individual employee of the organization. All payments for services must be supported by a written contract. Compensation must be paid in a manner that will facilitate compliance with state and federal reporting requirements. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

Based on the foregoing, it is our audit position that any payments for commissary manager services provided by Leonne or Ashley Kelly should have been supported by signed written contracts. Any compensation paid to any employee of the County must be included in the County's salary ordinance or labor contract approved by the County Council, regardless of the source of the compensation.

***Conflict of Interest***

Documentation reviewed during the examination revealed Richard Kelly and Ashley Kelly owned, operated, and were the sole members of Leonne at all relevant times. Richard Kelly and Ashley Kelly have a 49 percent and 51 percent ownership interest, respectively, in Leonne. Under Section VIII of Leonne's Operating Agreement, all profits and losses were allocated to each member based on the above ownership interests. All commissary payments to Leonne were deposited in Leonne's checking account.

There was not a clear separation of Leonne's and the Kellys' information and records. Bank records provided that Leonne's bank account was established on December 10, 2018, by Ashley Kelly and that the "Address of Legal Entity" was listed as Richard and Ashley Kellys' residence, which was not the business address of Leonne provided in the filings with the Indiana Secretary of State. In addition, checks issued from the Leonne bank account contained contact information at the top left of the check, which was Richard Kelly and Ashley Kelly, not Leonne, and listed the Kellys' residential address, not Leonne's business address. In July 2020, new checks for the Leonne bank account were issued, which added the Leonne name along with Richard and Ashley Kelly to the contact information on the checks; however, the address remained as the Kellys' residential address.

Additionally, examination of disbursements from the Leonne checking account indicate Richard and Ashley Kellys' household expenditures were paid directly from the Leonne checking account, including the purchase of a 2021 GMC Yukon Denali purchased and co-owned by Richard Kelly and Leonne, per the vehicle buyer's order. Also, all commissary checks deposited by Ashley Kelly were deposited to the Leonne checking account.

Neither Richard nor Ashley Kelly filed a Conflict of Interest Disclosure Form to disclose their ownership interest in Leonne or to disclose their marital status.

CLINTON COUNTY SHERIFF'S OFFICE  
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Indiana Code 35-44.1-1-4 states in part:

"(a) The following definitions apply throughout this section:

(1) 'Dependent' means any of the following:

(A) The spouse of a public servant. . . .

(3) 'Pecuniary interest' means an interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of:

(A) the public servant; or

(B) a dependent of the public servant who:

(i) is under the direct or indirect administrative control of the public servant; or

(ii) receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the public servant.

(b) A public servant who knowingly or intentionally:

(1) has a pecuniary interest in; or

(2) derives a profit from;

a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Level 6 felony. . . ."

Additionally, no documentation or information was presented during the examination showing Sheriff Richard Kelly performed any services related to the "commissary manager" position, which would entitle him to be compensated. Ashley Kelly provided sworn affidavit testimony to support that Sheriff Richard Kelly did not perform any services related to the "commissary manager" position. Specifically, in an affidavit filed in Clinton County Circuit Court on March 24, 2021, under Cause No. 12C01-2103-PL-000222, Ashley Kelly attests to the following:

*Only I—not the Sheriff—perform the work of Commissary Manager. Affidavit 8.*

Indiana Code 5-7-2-4 states: "It shall be unlawful to charge, tax up or receive, or permit to be charged, taxed up or received, under claim or color of office or official right, any fee or sum of money for or on account of services that were not actually executed and rendered."

***Clinton County Nepotism Policy***

It is our audit position that the payments to Leonne and Ashley Kelly violated the County's nepotism policy under the Clinton County Employee Handbook, effective as of January 1, 2019, which states, in relevant part, the following:

"Employees who are relatives of an Elected Official or Department Head may not be employed by the County in a position that results in one (1) relative being in the direct line of supervision of the other relative.

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Direct line of supervision means an Elected Official or Department Head who is in a position to affect the terms and conditions of another individual's employment, including making decisions about work assignments, compensation, grievances, advancement, or performance evaluation. The term does not include the responsibilities of the executive, legislative body, or fiscal body of the County, as provided by law, to make decisions regarding salary ordinances, budgets, or personnel policies of the County.

Employed means an individual who is employed by the County on a full-time, part-time, temporary, intermittent, or hourly basis. The term does not include an individual who holds only an elected office. The term includes an employee who is a party to an employment contract with the County.

Relative means any of the following: (1) A spouse, (2) A parent or stepparent, (3) A child or stepchild, (4) A brother, sister, half-brother, half-sister, stepbrother, or stepsister, (5) A niece or nephew, (6) An aunt or uncle, (7) A daughter-in-law or son-in-law. An adopted child is considered the same as natural child of the individual.

This policy does not apply to employees in their current position as of June 30, 2012 unless the employee has a break in employment. . . ."

On December 21, 2018, both Richard and Ashley Kelly signed under penalty of perjury a "Verification of Applicant for Employment for Compliance with the Clinton County Nepotism Policy" (Verification). Each Verification states:

"I, [Richard] [Ashley] Kelly, have reviewed the direct line of supervision for the position I am seeking . . . and I am not a relative of any employee who will be in my direct supervision in the position of [Sheriff] [Matron]. I understand that Relative means my spouse . . ."

Funds misappropriated, diverted or unaccounted for through malfeasance, misfeasance, or non-feasance in office of any official or employee may be the personal obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

We requested Leonne, LLC; Richard Kelly; and Ashley Kelly, jointly and severally, reimburse the jail commissary fund \$219,634.65. (See Summary of Charges, page 33)

### **SPECIAL INVESTIGATION COSTS**

The State of Indiana incurred costs in the amount of \$109,725.82 due to the special investigation of the Clinton County Sheriff's jail commissary fund disbursements to Leonne and Ashley Kelly.

Indiana Code 5-11-1-27(m) states in part:

"If the attorney general institutes civil proceedings related to this section or under [IC 5-11-5-1](#), the attorney general shall seek, in addition to the recovery of any funds misappropriated, diverted, or unaccounted for, restitution of:

- (1) costs incurred by the state board of accounts; . . .
- in connection with the civil proceedings."

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Audit costs incurred because of poor records, nonexistent records, or any other inadequate book-keeping practices, or because of theft or a shortage may be the personal obligation of the responsible official or employee.

Any audit costs paid without the prior approval of the SBOA when the SBOA has the statutory requirement to perform the audit of the unit may be considered a duplication of service and an unnecessary expense. These payments may be the personal obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

We requested Leonne, LLC; Richard Kelly; and Ashley Kelly, jointly and severally, to reimburse the State of Indiana for the special investigation costs in the amount of \$109,725.82. (See Summary of Charges, page 33)

**BOND AND INSURANCE COVERAGE**

***Bond Coverage***

The County obtained the following public official bonds providing coverage for Sheriff Richard Kelly and Matron Ashley Kelly:

Term	Amount of Coverage
Public Official Bond (Richard L Kelly):	
01-01-19 to 12-31-19	\$ 30,000
01-01-20 to 12-31-20	30,000
01-01-21 to 12-31-21	30,000
Public Official Position Schedule Bond:	
Matron - Sheriff	
01-01-19 to 01-01-20	\$ 5,000
01-01-20 to 01-01-21	5,000
01-01-21 to 01-01-22	5,000

***Insurance Coverage***

The County obtained the following employee theft and public employee dishonesty crime insurance policies:

Term	Amount of Coverage
Crime Coverage, Employee Theft/Public Employee Dishonesty:	
01-09-19 to 01-09-20	\$ 250,000
02-01-20 to 02-01-21	250,000
02-01-21 to 02-01-22	250,000

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**UNREASONABLE AND EXCESSIVE**

Historically, the County contracted with an individual to serve as the "Commissary Manager." The services were provided after office hours. Office hours are considered to be from 8:30 a.m. to 4:30 p.m., Monday through Friday. Compensation for the position based upon the most recent contracts with the former Commissary Manager was paid from the jail commissary fund at the rate of 50 percent or one-half of the "profit margin of each commissary item sold as calculated by the Sheriff after deducting supplier's invoices."

The contractual services under these former contracts were identical, dating back as early as March 7, 2011, to the most recent contract dated November 6, 2017, which included the following:

- a. taking prisoners' and detainees' orders for commissary sundries;
- b. order sundries from suppliers;
- c. stock the commissary storage supply area furnished at the Clinton County Jail;
- d. package commissary orders for distribution by jailers;
- e. calculate charges to prisoners' individual commissary accounts.

Over the years, changes have been made to how the commissary ordering, stocking, fulfillment of orders, and charges are made against inmate accounts for goods received; however, contract terms and compensation amounts have not addressed the changes. The process has become more automated and streamlined as to the fulfillment of the orders; thus, reducing the amount of time needed to perform the commissary services.

For example, inmates went from completing paper order forms that had to be collected by jail personnel for fulfillment in prior years to being able to complete electronic, paperless orders in more recent years. This change also eliminated the commissary manager's contractual service to calculate charges to prisoners' individual commissary accounts, as the calculations and distributions from the inmate trust accounts to the commissary funds were now automated.

In 2019, Sheriff Richard Kelly introduced "Direct Fulfillment" as a new product fulfillment option in addition to the already existing "Bulk Fulfillment" option. Sheriff Richard Kelly also added "e-cigarettes" and "spitless pouches" as new product options for inmates. Specifics related to the fulfillment options are as follows:

1. BULK FULFILLMENT: "commissary manager" orders products, stocks the CCSO commissary storage supply area, prints inmate order forms, packages individual inmate orders, and places the orders on carts for delivery to inmates by jail staff.
2. DIRECT FULFILLMENT: individual inmate orders are electronically placed with Victus Commissary Supply (Victus), who packages each inmate order. Each package identifies the inmate, cell location, and items included in the inmate package per the inmate's order for ease of delivery by the jail personnel. When delivered to the Clinton County Sheriff's Office, the individual inmate orders are also boxed by cell location.

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(Illustration of Victus packaging captured by SBOA Examiner on August 26, 2021)



Former commissary managers exclusively sold products through BULK FULFILLMENT. All work to perform their contractual duties was performed after regular office hours. Estimated hours to complete the tasks collectively took 8 to 10 hours per week, or approximately 520 hours per year. Former commissary managers prior to 2019 made between \$22,374.97 and \$37,167.18 per year.

A portion of Sheriff Richard Kelly's commissary merchandise continues to be processed through BULK FULFILLMENT. Current staff who participated in the after-office hours (8:30 a.m. to 4:30 p.m.) packaging and stocking of BULK FULFILLMENT commissary goods estimated the number of hours to complete the tasks collectively takes 4 to 6 hours per week, or 312 hours per year. One of these current CCSO staff members also entered into a contract with Leonne, the terms of which included a rate of pay for commissary services of \$100 per week for up to 5 hours of work, or 260 hours per year, with any additional hours worked to be paid at \$20 per hour. Per interview with this employee, additional time was never worked.

Checks issued to Leonne and Ashley Kelly were \$64,154.33 (2019), \$113,610.07 (2020), and \$46,120.13 (January 1, 2021 to September 30, 2021).

On February 5, 2019, the Sheriff Richard Kelly introduced the tobacco free e-cigarettes, which were ordered in bulk quantities. Matron Ashley Kelly retained the stock of product in her office. During regular office hours (8:30 a.m. to 4:30 p.m.), Matron Ashley Kelly and/or County Sheriff personnel sold individual e-cigarettes to inmates.

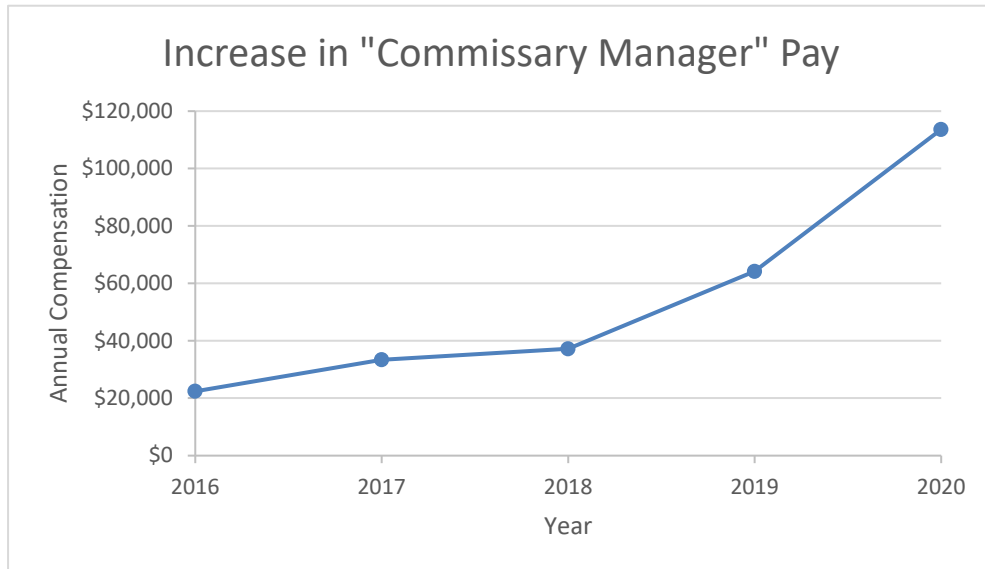
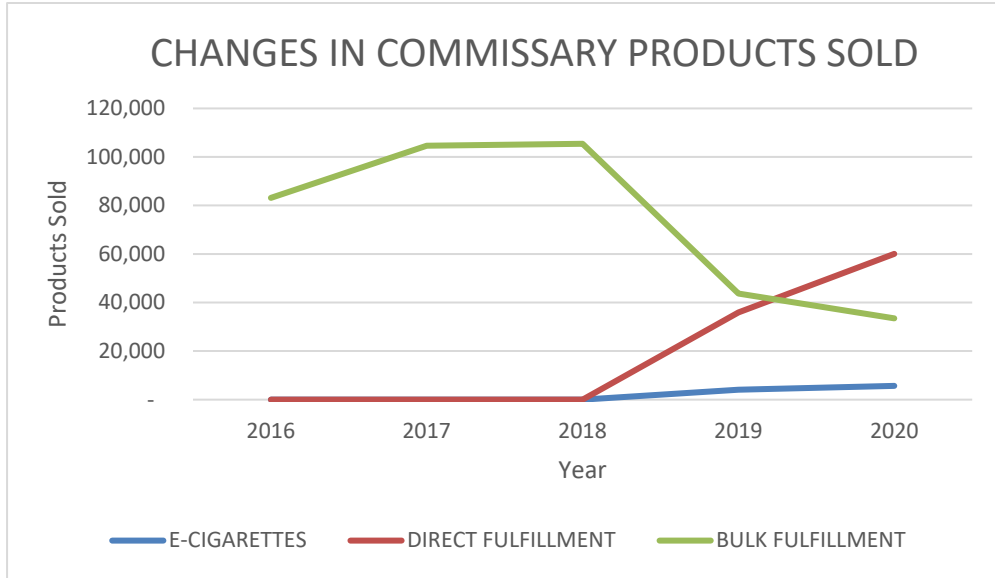
E-cigarettes accounted for \$146,565 of the commissary merchandise gross sales in 2019 and 2020, of which half the profit, \$58,626, was paid to Leonne. Use of e-cigarettes on County property was banned in Ordinance 2021-05, effective April 5, 2021, of which sales to inmates ceased on March 23, 2021.<sup>1</sup>

Sheriff Richard Kelly contracted with Victus on March 22, 2019, to perform DIRECT FULFILLMENT for many of the products the inmates ordered; thus, commissary services outlined in prior contracts related to ordering and stocking of supplies and packaging of inmate orders are now performed by Victus.

Our analyses of product sales and "commissary manager" pay shows that while 2019 and 2020 BULK FULFILLMENT product sales (requiring services to be performed as outlined in previous "commissary manager" contracts) decreased by more than 50 percent, the "commissary manager" pay increased by more than 300 percent.

<sup>1</sup> Ordinance 2021-05 is currently subject of a civil case between Sheriff Richard Kelly and Clinton County Board of Commissioners. As of the date of this Special Investigation Report, the case is still pending final disposition.

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Ashley Kelly provided sworn affidavit testimony that further supports the changes in products, increase in commissary sales and the resultant increase in money she was paid, and confirmation that the percentage of profits paid to her should be less than 50 percent.

Specifically, in an Affidavit filed in Clinton County Circuit Court on March 24, 2021, under Cause No. 12C01-2103-PL-000222, Ashley Kelly attests to the following:

- *I have increased by tens of thousands of dollars the revenue generated annually for the jail commissary fund by adding products available for inmates to purchase. Affidavit 17.*
- *E-cigarette sales and sales of other tobacco substitutes have greatly increased commissary sales. Affidavit 18.*

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- *The increased commissary revenue has also increased the amount of money I earn as Commissary Manager. Affidavit 22.*
- *Because the increase in commissary sales increased my earnings as Commissary Manager, and because the Commissioners never got around to providing a contract, I submitted a proposed contract to the Commissioner's attorney with the intent of negotiating a new, lower percentage of net sale proceeds for my compensation. Affidavit 23.*

Our investigation began with an email to Sheriff Richard Kelly dated January 27, 2021, followed by a visit to CCSO on February 3, 2021, after which several changes occurred in the CCSO commissary operations. As a result of these changes, 2021 data related to commissary pay and products sold has been excluded from the e-cigarette comparative above and from the chart analyses shown above. Changes to commissary in 2021 included:

- County Commissioners Ordinance 2021-05 clarified the prior smoking ban on County property to include e-cigarettes and any type of smokeless tobacco or its equivalent.
  - No more e-cigarettes were sold by the jail commissary after March 23, 2021.
- 50 percent of profit calculation was incorrect from May 1, 2020 through January 29, 2021.
  - Payments to Leonne from commissary ceased on January 30, 2021.
  - No commissary payments were made for 50 percent of commissary profit from January 31 through April 20, 2021.
  - Payments from commissary to Ashley Kelly began on April 21, 2021.
- County Commissioners Ordinance 2021-09 dated September 15, 2021, specifically prohibits payments from commissary to any County employee absent a contract approved by the County Commissioners.

Every effort should be made by the unit to avoid unreasonable or excessive costs. Unreasonable or excessive costs may be the personal obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

**CLINTON COUNTY NEPOTISM POLICY RELATED TO EMPLOYMENT OF THE JAIL MATRON**

While Indiana Code 36-1-20.2-13 allows for the County Sheriff to employ his spouse as the jail matron, Indiana Code 36-1-20.2-9 authorizes the County to adopt a more restrictive nepotism policy. Effective January 1, 2019, the County had a nepotism policy, which was more restrictive than Indiana Code 36-1-20.2-13 and did not allow for the appointment or employment of the Sheriff's spouse as jail matron.

On December 21, 2018, both Richard Kelly and Ashley Kelly signed under penalty of perjury, a "Verification of Applicant for Employment for Compliance with the Clinton County Nepotism Policy," which states in relevant part:

"I, [Ashley] [Richard] Kelly, have reviewed the direct line of supervision for the position I am seeking . . . and I am not a relative of any employee who will be in my direct supervision in the position of [Sheriff ] [Matron]. I understand that Relative means my spouse . . ."

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The County's nepotism policy that is included in the Clinton County Employee Handbook, with effective date January 1, 2019, states in relevant part:

"Employees who are relatives of an Elected Official or Department Head may not be employed by the County in a position that results in one (1) relative being in the direct line of supervision of the other relative.

Direct line of supervision means an Elected Official or Department Head who is in a position to affect the terms and conditions of another individual's employment, including making decisions about work assignments, compensation, grievances, advancement, or performance evaluation. The term does not include the responsibilities of the executive, legislative body, or fiscal body of the County, as provided by law, to make decisions regarding salary ordinances, budgets, or personnel policies of the County.

Employed means an individual who is employed by the County on a full-time, part-time, temporary, intermittent, or hourly basis. The term does not include an individual who holds only an elected office. The term includes an employee who is a party to an employment contract with the County.

Relative means any of the following: (1) A spouse, (2) A parent or stepparent, (3) A child or stepchild, (4) A brother, sister, half-brother, half-sister, stepbrother, or stepsister, (5) A niece or nephew, (6) An aunt or uncle, (7) A daughter-in-law or son-in-law. An adopted child is considered the same as natural child of the individual.

This policy does not apply to employees in their current position as of June 30, 2012 unless the employee has a break in employment. . . ."

Indiana Code 36-1-20.2-13 states: "Unless the policy adopted under section 9 of this chapter provides otherwise, a sheriff's spouse may be employed as prison matron for the county under [IC 36-8-10-5](#) and the spouse may be in the sheriff's direct line of supervision."

Indiana Code 36-1-20.2-9 states in part:

"(a) This chapter establishes minimum requirements regarding employment of relatives. The legislative body of the unit shall adopt a policy that includes, at a minimum, the requirements set forth in this chapter. However, the policy may:

- (1) include requirements that are more stringent or detailed than any provision in this chapter; and
- (2) apply to individuals who are exempted or excluded from the application of this chapter.

The unit may prohibit the employment of a relative that is not otherwise prohibited by this chapter. . . ."

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**RECORDS OF HOURS WORKED**

The timesheets provided for Ashley Kelly did not indicate hours worked on the days she worked in her role as matron.

Ashley Kelly served as the full-time jail matron during the examination and was compensated from the jail commissary fund for services provided as "commissary manager," in addition to her full-time jail matron salary. No documentation of hours worked for each compensated position was maintained.

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 Fair Labor Standards Act ("FLSA") requires that records of wages paid, daily and weekly hours of work, and the time of day and day of week on which the employee's work week begins be kept for all employees. These requirements can be met by use of the following prescribed general forms:

General Form 99A, Employee's Service Record  
General Form 99B, Employee's Earnings Record  
General Form 99C, Employee's Weekly Earnings Record

(Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

**SEMIANNUAL REPORTING OF COMMISSARY FUNDS**

Semiannual Commissary Reports to the County Council were provided showing total receipts and expenditures only. Sheriff Kelly did not provide a detailed record of receipts and disbursements semiannually to the County Council as required by Indiana Code 36-8-10-21(e), for 2019 or 2020.

Indiana Code 36-8-10-21(e) requires the sheriff to maintain a record of the jail commissary fund's receipts and disbursements. Such records shall be maintained on General Form No. 358, Ledger of Receipts, Disbursements and Balances. The Sheriff shall semiannually provide a copy of such record to the county council. The semiannual reports are due on July 1 and December 31 of each year. (Accounting and Uniform Compliance Guidelines for Counties of Indiana, as amended by County Bulletin Volume 378, July 2011)

**INTERNAL CONTROL DEFICIENCIES**

We noted the following deficiencies in internal control within the Sheriff's Office and at the County Government level:

- County officials were not requiring the correct reporting of commissary activities by the Sheriff; thus, there was not an independent review of the receipts or disbursements of the commissary funds.

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- The jail matron and spouse of the Sheriff was allowed to keep and retain her own record in support of time worked without following the same procedures for completing a timesheet or punching a time clock as required of other administrative staff within the County Sheriff's Office.
- County officials had various policies put into place regarding nepotism, conflicts of interest, ethics, etc. as part of the Clinton County Employee Handbook, effective date January 1, 2019, even ensuring all new officials and employees sign acknowledgements for receiving and following the policies; however, the County officials did not have procedures for monitoring compliance with those policies and the signed acknowledgements.

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. These 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. . . ."

CLINTON COUNTY SHERIFF'S OFFICE  
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EXIT CONFERENCE

The contents of this report were discussed on November 2, 2021, with Richard Kelly, County Sheriff; Alan Dunn, President of the County Council; Joshua B. Uitts, President of the Board of County Commissioners; Thomas Little, County Attorney; and Tonya Bond, Attorney for the County Sheriff's Office.

# CLINTON COUNTY

## BOARD OF COMMISSIONERS

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Frankfort, IN 46041

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Jordan Brewer

Josh Uitts

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November 10, 2021

*RE: Clinton County's Reply to the Special Investigation Report of the Clinton Sheriff's Office Jail Commissary dated January 1, 2019 to September 30, 2021*

Indiana State Board of Accounts  
Attention: Emily VanCuren, CPA  
EVancuren@sboafe.IN.gov  
302 W. Washington Street  
Indianapolis, Indiana 46204

Dear Indiana State Board of Accounts;

Please accept this letter as Clinton County, State of Indiana's, reply to the Special Investigation Report dated September 30, 2021 ("Report") in reference to the Clinton County Sheriff's Office Jail Commissary Fund. This letter will only address the issues found by the Indiana State Board of Accounts ("ISBOA") in the section entitled, "*Internal Control Deficiencies*" of Clinton County.

ISBOA's investigation found three areas of county control deficiencies, which are as follows:

- County officials were not requiring the correct reporting of commissary activities by the Sheriff; thus, there was not an independent review of the receipts or disbursements of the commissary funds.
- The jail matron and spouse of the Sheriff was allowed to keep and retain her own record in support of time worked without following the same procedures for completing a time sheet or punching a time clock as required of other administrative staff within the Sheriff's Department.
- County officials had various policies put into place regarding nepotism, conflicts of interest, ethics, etc. as part of the Clinton County Employee Handbook, Effective Date January 1, 2019, even ensuring all new officials and employees sign acknowledgements for receiving and following the policies; however, Clinton County officials did not have procedures for monitoring compliance with those policies and the signed acknowledgments.

Clinton County addresses each deficiency as follows:

- A. County officials were not requiring the correct reporting of commissary activities by the Sheriff; thus, there was not an independent review of the receipts or disbursements of the commissary funds.

There have been many unfortunate events throughout the tenure of Sheriff Kelly. One of the positive results has been the knowledge received by Clinton County Government in reference to oversight of the Commissary Fund. The Commissary Fund is unique from other county funds in that there is no direct supervision of the Fund by the County Auditor. Towards the beginning of calendar year 2021, Clinton County was made aware of a form prescribed by ISBOA for reporting of the Commissary Fund (County Form 205). Up to 2021, the Clinton County Council just received the amount generated from commissary sales every six (6) months. Clinton County, through their County Attorney, had formally requested a more detailed accounting of the Commissary Fund in April of 2021 through Cause Number 79C01-2104-PL-000035. Two months later, Clinton County had still not received detailed accounting of the Commissary Fund as requested. In an effort to expedite receiving this information, the Clinton County Attorney sent an email to the Sheriff's Counsel that included this sample spreadsheet from the ISBOA on June 17, 2021. Just after this submission, Clinton County received a more detailed accounting (although not an organized report) from the Sheriff. After Clinton County Council President Alan Dunn had re-organized the report, Clinton County had a much better idea on exactly what was coming in and out of the Commissary fund and for what purposes.

Clinton County is proud to state that this issue has been identified and corrected. From this point in time forward, the Sheriff of Clinton County will be required to submit the Commissary Fund Report based on County Form 205 once every six (6) months to the Clinton County Council.

- B. The jail matron and spouse of the Sheriff was allowed to keep and retain her own record in support of time worked without following the same procedures for completing a time sheet or punching a time clock as required of other administrative staff within the Sheriff's Department.

Back in 2019, the first year that Sheriff Rich Kelly was in office and his wife was the Matron, Clinton County, through the Board of Commissioners, through Commissioner Steve Woods, made several attempts and requests for time cards from the Clinton County Sheriff's Office. These time cards were not only of Matron Kelly, but also of Todd Lapin, who at the time was the Sheriff's Chief Deputy. It had been reported to the Commissioners that these persons were not working the hours they were being paid to work. Sheriff Kelly immediately engaged his legal deputy, Tonya Bond, and refused to produce these records. Counsel for the Commissioners stated that these were public records of regular daily accounting that should be able to be produced upon request. However, resistance was strong from the Sheriff's Office and Clinton County had reached an impasse; do we bring a complaint to the Public Access Counselor later to be followed up by a suit, or do we let it go and try to keep the peace? Commissioner Josh Uitts ("Commissioner Uitts") contacted the ISBOA to report this issue and gain some guidance. Commissioner Uitts was informed by the ISBOA that the issue did not rise to the level


to begin an examination and that it would be covered during the ISBOA's annual audit. Given this information, it was determined that the County should try to continue to work with the Sheriff's Office to avoid any public conflict or legal expense.


Hindsight, Clinton County should have pursued this issue. By the County's passivism, it only delayed the inevitable suit brought by the County against the Sheriff's Office in March of 2021.

- C. County officials had various policies put into place regarding nepotism, conflicts of interest, ethics, etc. as part of the Clinton County Employee Handbook, Effective Date January 1, 2019, even ensuring all new officials and employees sign acknowledgements for receiving and following the policies; however, Clinton County officials did not have procedures for monitoring compliance with those policies and the signed acknowledgments.

Going forward, Clinton County will have procedures for monitoring compliance with the above-mentioned policies. Although it is difficult for county government to regulate the behaviors of elected officials, the withholding of compensation pending compliance with any nepotism, conflicts of interest, ethics or otherwise may be one of the only remedies available. Although this action could certainly welcome litigation, this Report has demonstrated to Clinton County that the ISBOA would be at our disposal to enforce any such actions.

Clinton County would like to express their sincere gratitude to all involved at the ISBOA for their detailed Report and findings in this matter. Clinton County appreciates this valuable input from the ISBOA and will work hard towards putting the proper safeguards and procedures in place to identify these issues in a timely manner and then, if not already created, policies designed to deter the occurrences of such unfavorable events.

  
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Josh Uitts, President  
Clinton County Board of  
Commissioners

  
\_\_\_\_\_  
Alan Dunn, President  
Clinton County Council

Respectfully submitted,

POWER, LITTLE, LITTLE & LITTLE LAW FIRM  
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BY:   
\_\_\_\_\_  
Thomas F. Little, #30379-12



**Tonya J. Bond**  
[tbond@psrb.com](mailto:tbond@psrb.com)

**OFFICIAL RESPONSE**

November 12, 2021

**Via Email Only to Emily VanCuren**

**evancuren@sboafe.in.gov**

Indiana State Board of Accounts  
301 West Washington Street, Room E418  
Indianapolis, IN 46204-2765

**Re: Clinton County Sheriff's Office Response to the State Board of Accounts Preliminary Special Investigation Report of Clinton County Sheriff's Office Jail Commissary Clinton County, Indiana January 1, 2019 to September 30, 2021**

Dear Ms. VanCuren,

As you know, we represent the Clinton County Sheriff's Office (Sheriff's Office) in this matter. This letter is submitted as the Sheriff's Office's official response to the Indiana State Board of Accounts (SBOA) preliminary Special Investigation Report for the time period January 1, 2019 to September 30, 2021. Pursuant to its preliminary transmittal letter, the SBOA's investigation was designed "to determine compliance with applicable Indiana laws and uniform compliance guidelines established by" the SBOA. Upon the SBOA's request, the Sheriff's Office provided the SBOA with access to all Sheriff's Office records, including all bank records, and personnel. The investigation included the following Sheriff's Office funds and/or bank accounts:

1. Federal Inmate Fund;
2. Inmate Trust Fund;
3. Work Release Fund;
4. Commissary Fund; and
5. Sheriff's Office Trust Fund

All monies were accounted for in each of these funds.

On October 25, 2021, the SBOA notified Sheriff Kelly that the SBOA's exit conference would be held on November 2, 2021 in Indianapolis. Sheriff Kelly

attended the SBOA's exit conference with me, his legal deputy. Also in attendance were County Attorney Tom Little, Clinton County Council President Alan Dunn, and Clinton County Commissioner President Joshua Uitts. In attendance from the SBOA were Mark Mahon, Emily VanCuren, and Michell Janosky from Special Investigations. Ms. VanCuren read the SBOA's preliminary report to the attendees. No additional commentary was presented. The attendees were given an opportunity to ask questions, but that opportunity was restricted to the four corners of the preliminary report. The attendees were not provided an opportunity to ask substantive questions to be in a position to fully respond to the preliminary report.

The SBOA gave the Sheriff's Office ten (10) calendar days to respond to its preliminary report. Ms. VanCuren has subsequently confirmed that responses are due on November 12, 2021. Noting the inability to ask substantive questions during the exit conference and the short turn-around time, the Sheriff's Office provides the following response to the SBOA and reserves its rights to respond further if necessary. In making this response, the Sheriff's Office does not waive, and explicitly reserves, the right to assert additional objections and/or legal arguments or defenses in the event that any agency, party, or office seeks to prosecute any alleged wrongdoing or to recover any funds.

### **Summary of Response**

The SBOA's investigation shows that all money was accounted for in the Sheriff's Office financial accounts audited. The main issues, instead, relate to two perceived administrative deficiencies in how the Sheriff's Office was paying its Commissary Manager from the Commissary Fund: (1) there was not a written contract to pay the Commissary Manager; and (2) there was not a conflict disclosure on file to identify that the Sheriff's wife, Ashley Kelly, was the Commissary Manager being paid from the Commissary Fund.

As explained in more detail below, the Sheriff's Office disagrees with the SBOA's position that there were unauthorized payments from the Commissary Fund. The Commissary Fund contains no tax dollars or county general funds. Indiana law provides that the Sheriff or his designee has the sole discretion to disburse funds from the Commissary Fund to operate the commissary, including paying someone to maintain it. The Sheriff did not need a written contract to make disbursements.

With regard to the conflict disclosure, the conflict was disclosed, and there is no allegation of intentional concealment. At the time Sheriff Kelly took office,

January 1, 2019, the County Attorney and other county officials knew that Ashley Kelly would serve as Matron and Commissary Manager. The Sheriff's Office relied on the County Attorney to prepare the Commissary Manager contract and the conflict disclosure form, as the County Attorney had done with previous administrations and communicated to Sheriff Kelly he would do again. The fact that the Kellys formed a limited liability company on advice of their accountant to take in commissions paid to the Commissary Manager is of no consequence.

The Sheriff's Office disagrees with the outcome of the investigation. The SBOA is seeking reimbursement from Leonne LLC, Richard Kelly, and Ashley Kelly, jointly and severally, to the Commissary Fund of \$219,634.65 and investigatory costs of \$109,725.82. The Sheriff's Office disputes these amounts are owed.

SBOA's investigation conflated issues related to conflict of interest, nepotism, and the salary ordinance. The Sheriff's Office has responded to each of these issues and others below.

**1. There were no unauthorized payments from the Commissary Fund.**

The SBOA's report identifies payments made from the Commissary Fund as being unauthorized payments and is seeking reimbursement of these funds. Specifically, the SBOA has identified payments made to Leonne LLC (\$190,916.61) and Ashley Kelly (\$32,967.92, though only \$28,718.04 verified as deposited) as unauthorized.<sup>1</sup> In support of its findings, the SBOA has identified the salary ordinance and no written contract for the deficiencies in these payments, stating the following "reportable instances of noncompliance" with applicable Indiana laws and uniform compliance guidelines established by the SBOA:

1. Indiana Code § 36-2-16-4(4), which allows the county sheriff to "appoint one (1) first or chief deputy, and also may appoint the number of other full-time or part-time deputies and employees authorized by the county fiscal body . . . ." and
2. SBOA Guideline:

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<sup>1</sup> The Sheriff's Office has not done an independent accounting of these amounts and reserves the right to dispute them.

Compensation and Benefits All compensation and benefits paid to officials and employees must be included in the labor contract, salary ordinance, resolution or salary schedule adopted by the governing body unless otherwise authorized by statute. Compensation should be made in a manner that will facilitate compliance with state and federal reporting requirements.

Payments for services provided by an organization should go directly to the organization and not to an individual employee of the organization. All payments for services should be supported by a written contract. Compensation should be made in a manner that will facilitate compliance with state and federal reporting requirements

For at least the following reasons, the Sheriff's Office disputes that there has been any unauthorized payments from the Commissary Fund.<sup>2</sup>

**A. *The SBOA's identified reportable instances of noncompliance do not apply to the Commissary Fund because the commissary statute gives the Sheriff control over the Commissary Fund with regard to amounts paid to operate the commissary, including personnel.***

The Sheriff's Office disputes that unauthorized payments were made from the Commissary Fund. As the SBOA knows, the Sheriff's Office is seeking a judicial determination of the Sheriff's rights and obligations under Indiana Code § 36-8-10-21 (the "commissary statute"), including his right to pay personnel to run commissary even absent a written contract.<sup>3</sup>

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<sup>2</sup> Because the County Commissioners refuse to agree to the same contract for Ms. Kelly (through Leonne or otherwise) as they did for Ms. Ward (and other Sheriffs' wives), out of an abundance of caution, the Sheriff's Office has stopped paying its Commissary Manager until these issues are resolved. The Commissary Manager continues to provide commissary services. The Sheriff's Office does not waive its right to pay its Commissary Manager for past work that has gone unpaid. As of the date of this response, the Commissary Manager has not been paid for approximately 20 weeks in 2021.

<sup>3</sup> This matter is currently pending in Tippecanoe Circuit Court under Cause No. 79C01-2104-PL-000035. This matter was originally brought by the Clinton County Commissioners, later joined by the Clinton County Council, who accused the Sheriff and Ms. Kelly of "illegal expenditures" from the Commissary Fund and asked for it to be removed from the Sheriff's control. The Court denied their preliminary injunction on June 14, 2021. They moved to dismiss their claims on October 25, 2021, which the Court granted, but the Sheriff's claims are still pending.

Indiana law provides that the Commissary Fund is separate from the general fund and money in it does not revert to the general fund.<sup>4</sup> The Sheriff or the Sheriff's designee, by statute, is authorized to disburse funds from the Commissary Fund without oversight by any other county official.<sup>5</sup> This authority includes the

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<sup>4</sup> Indiana Code § 36-8-10-21(b) states:

(b) A jail commissary fund is established, referred to in this section as "the fund". The fund is separate from the general fund, and money in the fund does not revert to the general fund.

<sup>5</sup> Indiana Code § 36-8-10-21(d) states:

(d) The sheriff, or the sheriff's designee, at the sheriff's or the sheriff's designee's discretion and without appropriation by the county fiscal body, may disburse money from the fund for:

- (1) merchandise for resale to inmates through the commissary;
- (2) expenses of operating the commissary, including, but not limited to, facilities and personnel;
- (3) special training in law enforcement for employees of the sheriff's department;
- (4) equipment installed in the county jail;
- (5) equipment, including vehicles and computers, computer software, communication devices, office machinery and furnishings, cameras and photographic equipment, animals, animal training, holding and feeding equipment and supplies, or attire used by an employee of the sheriff's department in the course of the employee's official duties;
- (6) an activity provided to maintain order and discipline among the inmates of the county jail;
- (7) an activity or program of the sheriff's department intended to reduce or prevent occurrences of criminal activity, including the following:
  - (A) Substance abuse.
  - (B) Child abuse.
  - (C) Domestic violence.

Sheriff's sole authority (or his designee) to disburse money from the Commissary Account to operate the commissary, including paying someone to operate it.<sup>6</sup> Nothing in the commissary statute requires a written contract for the Sheriff to disburse such funds. There is no dispute that previous administrations paid former commissary managers 50% of the profit from the sale of commissary merchandise, as set forth in the Ward contract that the SBOA identifies in its report. Sheriff Kelly paid the Commissary Manager under these same terms.

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(D) Drinking and driving.

(E) Juvenile delinquency;

(8) expenses related to the establishment, operation, or maintenance of the sex and violent offender registry web site under IC 36-2-13-5.5; or

(9) any other purpose that benefits the sheriff's department that is mutually agreed upon by the county fiscal body and the county sheriff.

Money disbursed from the fund under this subsection must be supplemental or in addition to, rather than a replacement for, regular appropriations made to carry out the purposes listed in subdivisions (1) through (8).

<sup>6</sup> Indiana Code § 36-8-10-21(d)(2) states:

(d) The sheriff, or the sheriff's designee, at the sheriff's or the sheriff's designee's discretion and without appropriation by the county fiscal body, may disburse money from the fund for:

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(2) expenses of operating the commissary, including, but not limited to, facilities and personnel;

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**B. *There was an oral contract for the amounts SBOA has identified as "unauthorized payments." As a corrective action, the oral contract has been reduced to writing with a retroactive effective date of January 1, 2019.***

The SBOA has identified its own guideline that "All payments for services must be supported by a written contract" as support for its determination that there were unauthorized payments from the Commissary Fund. As set forth above, pursuant to Indiana Code § 36-8-10-21, the Sheriff's Office disputes that this guideline applies to the Commissary Fund. Additionally, in reviewing other SBOA audit reports, failure to have a written contract for services has not always resulted in an SBOA finding of seeking reimbursement for "unauthorized payments." The Sheriff's Office, therefore, requests additional information from the SBOA to determine when the lack of a written contract results in the request for "unauthorized payments" for work completed to be reimbursed so that the Sheriff's Office can properly address the identified deficiency.

Subject to the above, the Sheriff's Office states further that there is no dispute that there was an oral contract that Ashley Kelly would be paid as the Commissary Manager. The SBOA report at its section titled "Unreasonable and Excessive" shows that the Commissary Manager has been paid half of the commissary profit dating back to as early as March 7, 2011. Each of those contracts were made with the Sheriff's wife. In an effort to cure the perceived deficiency, the Sheriff's Office has entered into a written contract between the Sheriff's Office and Leonne LLC and/or Ashley Kelly with a retroactive date of January 1, 2019.

**C. *The salary ordinance does not apply to the amounts SBOA has identified as "unauthorized payments."***

The SBOA cites to Indiana Code § 36-2-16-4(4) presumably as authority for its position that amounts paid to Ashley Kelly from the Commissary Fund somehow violated the salary ordinance. This statute, however, does not apply to Ms. Kelly. Ms. Kelly is not the Chief Deputy or an appointed deputy by which the Sheriff needed the county fiscal body to approve. Instead, pursuant to Indiana Code § 36-8-10-5(a), the Sheriff is required to appoint a matron and has complete hiring authority to do so.<sup>7</sup>

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<sup>7</sup> Indiana Code § 36-8-10-5(a) states, "Each sheriff shall appoint a prison matron for the county. The sheriff shall set the qualifications for that position. Except as provided in subsection (b), the sheriff has complete hiring authority over the position of prison matron."

The SBOA's report states, "Any compensation paid to any employee of the County must be included in the County's Salary Ordinance or labor contract approved by the County Council, regardless of the source of the compensation." But the guideline that the SBOA cited is not quite that broad. Instead, it states, "All compensation and benefits paid to officials and employees must be included in the labor contract, salary ordinance, resolution, or salary schedule adopted by the governing body unless otherwise authorized by law." (Emphasis added.) There is no dispute that Ashley Kelly's salary as the Matron is included in the county salary ordinance. The SBOA's position is that payments made from the Commissary Fund to Ms. Kelly as the third-party vendor serving as Commissary Manager should also have been included in the salary ordinance. The commissary statute, however, provides that the Sheriff can pay for personnel from the Commissary Fund, which is outside of the general fund and not subject to any salary ordinance.<sup>8</sup>

**2. The Kellys disclosed the conflict. As a corrective action, a conflict disclosure form has been filed.**

Sheriff Kelly took office on January 1, 2019. Before taking office, Sheriff Kelly discussed with County Attorney Tom Little as early as November 2018 preliminary matters, which included:

1. Appointing Sheriff Kelly's wife, Ashley Kelly, as Matron;
2. Ashley Kelly serving as the Commissary Manager under the same terms as the previous Sheriff's wife, Nancy Ward, so that Mr. Little could prepare the contract as he did for Sheriff Ward;
3. The Clinton County's nepotism policy; and
4. Submission of the conflict disclosure required based on Ms. Kelly working with the Sheriff's Office as Matron and as Commissary Manager.

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<sup>8</sup> Indiana Code § 36-8-10-21(d)(2) states:

(d) The sheriff, or the sheriff's designee, at the sheriff's or the sheriff's designee's discretion and without appropriation by the county fiscal body, may disburse money from the fund for:

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(2) expenses of operating the commissary, including, but not limited to, facilities and personnel;

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The Kellys were led to believe they could rely on Mr. Little's guidance on these preliminary matters. As an example, Mr. Little requested Sheriff-elect Kelly's home address to include on the conflict disclosure form. Mr. Little not only failed to file the conflict disclosure form but also failed to notify the Kellys that he was not filing it and of any urgency or ramifications of failing to file a written conflict disclosure.

As a corrective action, Sheriff and Ashley Kelly have filed a conflict disclosure.

With regard to the Clinton County Nepotism Policy found in the Clinton County Handbook, it does not apply to this situation. The policy does not address appointed positions or third-party contractors, which are the capacities in which Ms. Kelly served. The policy states, "Employed means an individual who is employed by the County on a full time, part time, temporary, intermittent, or hourly basis. The term does not include an individual who holds only an elected office. The term includes an employee who is a party to an employment contract with the County." Because the Matron position is appointed and the Commissary Manager is a third-party contractor, these positions do not meet the County's definition. For example, the County is not responsible for maintaining Ms. Kelly's position as Matron once Sheriff Kelly leaves office because that is an appointed position. Even though neither Sheriff Kelly nor Ashley Kelly were "applicants," they were asked by the Auditor's office to sign several new-hire forms, including the County's "Verification of Applicant for Employment for Compliance with the Clinton County Nepotism Policy." They should not have been asked to sign these verifications.

The SBOA's report discusses Leonne LLC as well. There is nothing nefarious about Leonne LLC. The SBOA's "Background" section states that the complainant believed that Leonne LLC was a CPA firm. Neither Sheriff nor Ashley Kelly ever attempted to conceal that they owned Leonne LLC. The Sheriff's Office can only presume that the complainant mistakenly thought that the registered agent identified on Indiana's Secretary of State's website was the owner.

Although Leonne LLC was originally created and owned by Richard Kelly and Ashley Kelly, the ownership has changed to only Ashley Kelly. Additionally, there have been no household expenses deducted on Leonne's corporate returns. The only "household expenditure" the SBOA identified as being paid through Leonne's checking account is a 2021 GMC Yukon Denali, which the SBOA incorrectly states is "co-owned" by Leonne and Richard Kelly. The Denali is owned

by Leonne LLC only. Richard Kelly signed the purchasing documents on behalf of Leonne LLC when he was an owner. Any household expenses the SBOA identified as being paid from Leonne's checking account have been accounted for as distributions by Leonne.

In addition, the SBOA's report states:

In addition, checks issued from the Leonne bank account contained contact information at the top left of the check, which was Richard Kelly and Ashley Kelly, not Leonne and listed the Kellys' residential address, and not Leonne's business address. In July 2020 new checks for the Leonne bank account were issued, which added the Leonne name along with Richard and Ashley Kelly to the contact information on the checks; however, the address remained as the Kelly's [sic] residential address.

This appears to be factually incorrect. Leonne LLC has always been identified on the checks ordered by Leonne. The SBOA has not identified to the Sheriff's Office or asked any questions regarding any checks from Leonne's account without Leonne on the check. Richard and Ashley Kelly, along with their home address, were included as Leonne's members for convenience. Leonne is in the process of ordering new checks to take Richard Kelly off of the account because he is no longer a member of Leonne LLC.

At the end of the day, commissions paid from the Commissary Fund to the Commissary Manager, whether to Leonne LLC or to Ashley Kelly, were paid for work done by the Sheriff's wife, just like the previous three administrations. The conflict disclosure was made before Sheriff Kelly took office and now has been made in writing through the State's form.

**3. The money deposited into the Commissary Fund is not public funds and did not come from the public treasury. No reimbursement is required.**

The SBOA is requesting that Leonne LLC, Richard Kelly, and Ashley Kelly jointly and severally reimburse the Commissary Fund \$219,634.65. The Sheriff's Office reasserts its response contained above under Section 1, "There were no unauthorized payments from the Commissary Fund." The Sheriff's Office further states that the Commissary Fund is not a public fund. No tax dollars are deposited

into the Commissary Fund. It never reverts back to the General Fund.<sup>9</sup> Instead, all monies deposited into the Commissary Fund are from the sale of commissary items to inmates in the Clinton County Jail.

In addition, reimbursement of the full amount would be punitive and result in a windfall not accounting for work performed, taxes paid, and related issues. Moreover, to the extent reimbursement is sought, it should be sought from the County. The Kellys relied on the County Attorney to prepare the Commissary Manager contract, just as he had done under the Ward administration. As set forth in the SBOA's report at the section titled "Internal Control Deficiencies," this is an administrative failing, and if anyone should be held responsible, it should be the County.

**4. The special investigation costs were unnecessary and are excessive.**

The SBOA is requesting that Leonne LLC, Richard Kelly, and Ashley Kelly jointly and severely reimburse the SBOA \$109,725.82 for special investigation costs. No documentation of these costs and expenses was provided. The SBOA's report states that "[a]udit 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." But the SBOA has not identified any of these issues in its report. This amount is excessive for an investigation that began because of a conflict between elected officials. Additionally, there were no disputed facts. The SBOA could have reconciled the Commissary Fund with bank records, invoices, and ledgers, interviewed the same employees it interviewed, and came to the exact same conclusions contained in the preliminary report. Everyone involved has known that Ashley Kelly is the wife of Sheriff Kelly, serves as the Matron, and separately works as a third-party contractor fulfilling the Sheriff's commissary duties under the same Commissary Manager terms as the previous Commissary Manager—50% of the profit. As an example of unnecessary expenditures, the SBOA's trip to Kentucky added no value to the investigation.

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<sup>9</sup> Indiana Code § 36-8-10-21(b) states:

(b) A jail commissary fund is established, referred to in this section as "the fund". The fund is separate from the general fund, and money in the fund does not revert to the general fund.

Again, if anyone should pay these investigation costs, it should be the County that instigated this investigation without asking the Sheriff any questions to clarify its misperceptions.

**5. Amounts paid to the Commissary Manager are not unreasonable and excessive.**

In its "Unreasonable and Excessive" section, the SBOA's investigation confirms that since at least March 2011 the Sheriff's wife has been the Commissary Manager and has been paid 50% of commissary profit.<sup>10</sup> The SBOA takes issue that the "process has become more automated, and streamlined . . .; thus, reducing the amount of time needed to perform the commissary services." First, even if this were the case, it is of no consequence because the payment for services is by contract. Third-party contractors are expected to automate their processes. Second, it appears to be factually inaccurate with regard to time spent fulfilling the contractual duties. Although the warehouse orders have become automated, warehouse orders only account for about 25% of commissary weekly orders. It is our understanding that Ms. Ward spent one day per week fulfilling orders. Ms. Kelly spends three days per week fulfilling orders.

The SBOA appears to suggest that because Ms. Kelly's commissary strategy has been more successful than in years past, that the Sheriff's Office has experienced "unreasonable or excessive costs." The SBOA's report does not show the increased revenue to the Commissary Fund or identify the ways in which the Sheriff's Office has been able to offset expenses because of this increased revenue. The SBOA's report also does not provide any information as to what other commissary vendors may charge. A cursory review by the Sheriff's Office shows that others charge 60% of profit for a facility of the same size. Showing an increased profit over time does not equate to unreasonable or excessive costs.

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<sup>10</sup> The SBOA identified e-cigarettes as accounting for additional profit previous Commissary Managers did not make. The SBOA noted that the Clinton County Commissioners attempted by ordinance to stop the Sheriff's Office from selling e-cigarettes. The Sheriff's Office filed a declaratory judgment action for a judicial determination as to whether the Commissioners had any authority to regulate commissary. On October 8, 2021, the Court declared that the Commissioners exceeded their authority and unlawfully interfered with the Sheriff's authority to administer the jail. The Commissioners have filed a motion to reconsider, eluding to this report for its basis. This action is pending in Montgomery Superior Court under Cause No. 54D01-2103-PL-000257 with Parke County Judge Samuel Swaim as Special Judge.

**6. Ashley Kelly is not required to record her hours worked.**

Ms. Kelly is the Matron of the Clinton County Sheriff's Office, appointed by statute. For her time records, Ms. Kelly identifies the days that she works, which is sufficient. She is exempt from overtime laws, so the Fair Labor Standards Act provision the SBOA cited that requires hours worked each day does not apply.

Ms. Kelly's hours spent as Commissary Manager were worked as a third-party vendor and not as an employee. No time records are required.

**7. As a corrective action, the Sheriff's Office has begun providing to the County Council a detailed record of receipts and disbursements semiannually.**

The Sheriff's Office historically reported total receipts and expenditures from the Commissary Fund to the County Council, as was done under previous administrations. Indiana Code § 36-8-10-21(e) does not specify that the semiannual report to the County Council is to include details of receipts and disbursements.<sup>11</sup> The Sheriff's Office offered to provide more detailed records, but those were never requested.

As a corrective action even before receiving the SBOA's preliminary report, the Sheriff's Office has provided detailed records for 2019, 2020 and the first semiannual report for 2021. The Sheriff's Office will continue to provide detailed receipts and disbursements semiannually to the County Council.

**Conclusion**

The Sheriff's Office appreciates that the results of the SBOA's investigation show that all monies are accounted for in the various Sheriff's Office funds. Although the Sheriff's Office disagrees with much of the SBOA's results, we appreciate your time and effort and the opportunity to provide this official response pursuant to Indiana Code § 5-11-5-(b). We hope this response will be fairly considered and results in pertinent revisions to the report. Please let us know

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<sup>11</sup> Indiana Code § 36-8-10-21(e) states:

The sheriff shall maintain a record of the fund's receipts and disbursements. The state board of accounts shall prescribe the form for this record. The sheriff shall semiannually provide a copy of this record of receipts and disbursements to the county fiscal body. The semiannual reports are due on July 1 and December 31 of each year.

November 12, 2021  
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whether there is any additional information you would like to see to finalize your report.

All my best,



Tonya J. Bond

ec: Sheriff Kelly  
Michelle Janosky, SBOA

CLINTON COUNTY SHERIFF'S OFFICE  
 JAIL COMMISSARY  
 SUMMARY OF CHARGES  
 (Due to Malfeasance, Misfeasance, or Nonfeasance)

	<u>Charges</u>	<u>Credits</u>	<u>Balance</u>
Unauthorized Payments, Conflict of Interest, and the Clinton County Nepotism Policy, pages 3 through 6 Leonne, LLC; Richard Kelly; and Ashley Kelly, jointly and severally	<u>\$ 219,634.65</u>	<u>\$ -</u>	<u>\$ 219,634.65</u>
Special Investigation Costs, pages 6 and 7 Leonne, LLC; Richard Kelly; and Ashley Kelly, jointly and severally	<u>109,725.82</u>	<u>-</u>	<u>109,725.82</u>
Totals	<u><u>\$ 329,360.47</u></u>	<u><u>\$ -</u></u>	<u><u>\$ 329,360.47</u></u>

This report was forwarded to the Office of the Indiana Attorney General and the special prosecuting attorney.

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AFFIDAVIT

STATE OF INDIANA )  
CASS )  
COUNTY)

I, Emily VanCuren, Field Examiner, being duly sworn on my oath, state that the foregoing report based on the official records of the Clinton County Sheriff's Office, Clinton County, Indiana, for the period from January 1, 2019 to September 30, 2021, is true and correct to the best of my knowledge and belief.

Emily VanCuren  
Field Examiner

Subscribed and sworn to before me this 22 day of Nov, 2021

Jimmy Bartlett  
Notary Public

My Commission Expires: May 10, 2026

County of Residence: CASS

