

Minutes of Greenville Town Council Meeting April 13th, 2009

President Talbotte Richardson noted the passing of Councilman Hanzel Barclay who represented the 3rd district of our Greenville Town Council. To the council's knowledge this is the first councilman to pass away while holding office. The Floyd County Clerk has been notified and the Floyd County Democratic Chairman has thirty days to fill the vacancy, or the council will pick a replacement. Councilwomen Hayes requested that some type of memorial be bestowed on Hanzel, perhaps naming of a street. There was a moment of silence and then Chaplain Mark Avery offered a prayer. Councilman Barclay will be sorely missed and hard to replace.

President Talbotte Richardson called the regular monthly meeting to order. Other Councilpersons present were Bob Wright, Patti Hayes and Randal Johnes, along with Clerk Jack Travillian. Also attending the meeting was Water Utility Superintendent Gary Getrost, town attorney Rick Fox, and other concerned citizens.

Minutes: Councilman Johnes made a motion and B. Wright seconded to accept the March monthly minutes. The council voted to approve 4-0. A motion was made by R. Johnes and seconded by T. Richardson to accept the special meeting of March 9 minutes. Motion passed 4-0.

Marshal's Report:

Marshal Burkhart gave his monthly report about arrest, tops, tickets and warnings. Effective May 1, 2009 the Indiana State Police are offering gun permits application online. The applicant simply prints off the forms and returns it along with any appropriate fees to their local police department to be finger printed. The forms are still available at town hall for those who do not want to use the website. Marshal Burkhart reminded the council that each police officer must complete 24 hours training each year to remain active. Currently the Greenville Marshal Department Officers are finishing up mandatory training offered by Georgetown Police Department. Marshal Burkhart questioned the positioning of the stop sign on West 1st Street. Councilman Johnes stated the sign should face the southbound traffic because of the blind stop caused by the garage located at 1st Street and the alleyway.

Marshal Burkhart stated that he had been in contact with an agency about matching funding for a police officer. The requirement would be 25% matching from the local budget and run for 3 years.

Water Business:

Superintendent Getrost submitted monthly adjustments to the council. The board approved the adjustment for the bill (4-0).

Pumping station in Galena: Attorney Fox gave a report on the progress of the remaining easement on an unbuildable lot on Evert Avenue using the process of "Imminent Domain". Attorney Earl Mullins has contacted Fox and stated that the owner Stephanie

Padget will accept the council's offer of \$2,325. Fox stated that the paper work should be completed within a couple of weeks. Superintendent Getrost gave a report that a large Sycamore tree had to be cut up on the site.

Contract for GPS: Superintendent Getrost has ordered a laptop Toughbook CF30 for field uses. The cost of the unit is \$3820. Because of the cost the limit on the Water Utility credit card was increased to \$5,000. R. Johnes made the motion and T. Richardson seconded the limit increase. Motion passed 4-0.

Additional adjustment a customer has requested an additional adjustment due to a line failure during the ice storm. The customer was unaware due to no visible signs of leakage. The original standard adjustment lowered the bill from \$929 to \$804. The council agreed to have the bill adjusted in the same matter as the Hartfield adjustment from last year due to the circumstances. R. Johnes made the motion and P. Hayes seconded it. Motion passed 4-0. Superintendent Getrost is to provide Council Member Johnes with information concerning water bill adjustments. Council Member Johnes will develop a resolution to address adjustment for the future.

Update on the backup generator: Superintendent Getrost presented the council with three bids for installing a backup generator. This generator should be available to power either town hall or the maintenance garage. The bids were Kiesler Electric - \$6,575 for a 16K and \$850 for transfer panel to garage for a total cost of \$7,425. Dan's Electric \$9,500 for 17K generator and \$1,200 for maintenance building, for a total cost of \$10,700. River City Controls bid of \$6,930 for 17K Guardian generator with dual controls to do either building. Motion made by R. Johnes and seconded by B. Wright to accept the lowest bid from River City Controls. Motion passed 4-0.

Update on carpeting: Superintendent Getrost gave the council 2 bids. He had requested bids from several different installers and only two would do the estimate without charges. P C Lumber from New Albany bid of \$3,269.31 and Odell Andres and Son of Floyds Knobs bid of \$3,987.18. Motion was made to accept the lowest bid by R. Johnes and seconded by B. Wright. Motion passed 4-0.

Superintendent Getrost noted that the office remodeling was almost complete however the counter top in the main lobby was looking aged. He requested replacement and will be seeking bids with an approximate cost of \$1,000. The council agreed to look at bids at next month's meeting.

Financial:

Review/Approval Checks and Expenditures: Clerk Travillian presented the forms for checks written from the utility and the town.

Clerk Travillian has had major problems with the town and water utility software and is not pleased with the service and cost. He will be looking into possible replacement of the current Keystone software. The annual service contract will be up for renewal in July.

Committee Reports:

Councilwoman Hayes gave a report about research she had done in regards to the terminology of Police Commissioner as the council representative for the Marshal's Department. The proposed version of Ordinance 2009-M-014, an ordinance concerning the use of force by the Greenville Marshal's Department, there is reference to the police commissioner. Councilwoman Hayes has talked to the Indiana State Law Enforcement Academy and the town cannot have both a marshal and police commissioner. Hayes did the research because she was questioned by a Floyd County police officer about someone having a badge and not being authorized as a qualified police officer. Councilman Johnes stated the only persons that can legally have a badge and arrest powers are those who have completed the appropriate training required by Indiana Codes. The Marshal, Deputy Marshal and any Reserve Officers (Burkhart, Wisman, Moore, and Schmitt) are the only members that have completed the training. The term police commissioner was not used to imply arrest powers, it was used only to name the person who would be the liaison between the Council and the Marshal Department. The term will be edited out of the proposed ordinance.

Bob Wright/Emergency Services:

There is a drainage problem in Wind Dance Farms. Councilman Wright requested getting three bids to correct a slight problem, approximate cost of under \$400.

Councilman Wright made the proposal of canceling the snow removal contract for the rest of 2009. Attorney Fox stated that he would have to look at the contract before giving an opinion about canceling or changing the contract.

Randal Johnes/Property:

The Greenville Website (<http://visitgreenvillein.com>) has been updated and will start accepting Greenville News – announcements about birthdays, anniversaries, new births, and yard sales. Visit the website for more details about the posting. Water Clerk Stone has expressed an interest in learning to update the Website, so Councilman Johnes requested purchasing of software to install on the water company's computer. The purchase was approved 4-0.

Widening of Highway 150 Project: Councilman Johnes read an e-mail response from INDOT that was sent to Janet Worrall stating that the 150 renovation project is still in the design stage. INDOT stated the speed limit is still an enforcement issue, reducing the speed limit and installing a signal light would cause backups and increased rear end accidents on highway 150 at the intersection at Greenville/Georgetown Road. INDOT stated the intersection at Cross Street and Highway 150 does not meet the state warrants for a traffic light. Mr. Percy of INDOT is requesting a six-month snap shot of tickets in the area. Councilman Johnes stated to Mr. Percy that the Marshal Department can not write tickets to motorist obeying the speed limit. The problem is the speed limit is posted to high at 50 and 55 mph in town. Councilman Johnes read a letter President Richardson sent to Mr. Percy stating the fact that lowering the speed limit is a safety issue for citizens of Greenville not the traffic passing through. His letter again requested to install a traffic signal and lower the speed limit to 30 MPH within the town limits. Councilman

Johnes has spoken with Mary Ann Jordan in the Governor's Office. The packet of information on the 150 project that was sent to the Governor has been delivered to the Governor's Chief of Staff and is being reviewed. Councilman Johnes will follow up giving the Chief of Staff time to review the information.

Planning and Zoning:

Don Lopp will be holding a public town meeting at the Greenville School. Details to follow.

Councilman Johnes has contacted Don Thieneman requesting an update at the May 11, 2009 meeting about the annexation of Heritage Springs.

Councilman Johnes has been in contact with Erica Speer of the Southeast Community Liaison Office of Community and Rural Affairs about receiving a grant to be used for an engineering study for the possibility of installing sewers in Greenville. If grant is obtained for the engineering study after study is complete it may be possible to receive a grant to construct a sewer treatment plant and install sewers. River Hills would be the local agency representing Greenville to the state in drafting the grant request. There will be a meeting on April 29 at 10:30 AM in the town hall with the Town Council, Erica Speer and Melissa Woods to discuss the grant process. This will be an Executive Meeting closed to the public.

New Business:

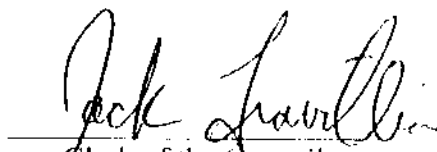
Councilman Johnes commended Water Company Clerk Amy Stone for the prompt copying of all ordinances and minutes that are on file. These document copies have been put in binders and are located at the town hall for public consumption.

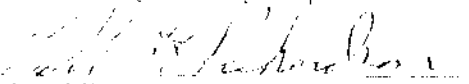
Councilman Johnes requested a special meeting to be held on April 27 at town hall. The meeting will be for the reading and possible passage of new ordinances. Councilman Johnes noted this is necessary to clean up the back log of ordinances the town is considering. Future special meetings may be required. No other regular business will be discussed at these special meetings.

Paving of Parkland Heights – Councilman Johnes stated he has put together a bid package and contacted four companies for resurfacing the streets that were widened last year in Parkland Heights to help insure level wear and improve the appearance of the sub-division. Bids are due for the May 11th monthly meeting. After reviewing the bids it will be determined if project needs to be published in the paper for additional bids.

No further business coming before the Council the meeting was adjourned.

ATTEST:


Clerk of the Council


Presiding Officer

Town of Greenville
P.O. Box 188
Greenville, In. 47124

AGENDA FOR:

TOWN OF GREENVILLE, INDIANA

MONTHLY MEETING FOR MONDAY, APRIL 13TH, 2009

1. **MEETING CALLED TO ORDER BY COUNCIL PRESIDENT:** Talbotte Richardson
2. **OPENING MEETING WITH PRAYER:**
3. **SPECIAL PRESENTATIONS:**
4. **READING, REVIEW AND APPROVAL OF MINUTES FROM PREVIOUS MONTHLY MEETING MINUTES OF: MARCH 9TH, 2009**
5. **MARSHAL'S REPORT:** William Burkhart Jr.
{A} - Normal monthly activity reports.
6. **FLOYD COUNTY OR STATE OF INDIANA REPRESENTATIVES:**
7. **WATER BUSINESS: WATER SUPERINTENDENT:** Gary Getrost
{A} - Report on water usage and leaks
{B} - Superintendent's report
{C} - FMSM Contract update
{D} - Installation of Pumping Station
{E} - Bids Back-Up Generator
{F} - Bids for Carpet
{G} -Customer Request for Water Adjustment
8. **FINANCIAL: GREENVILLE TOWN CLERK:** Jack Travillian
{A} - Review and Approve Checks and Expenditures.
9. **COMMITTEE REPORTS:**
{A} - Town Board President: Talbotte Richardson
{B} - Emergency Services: Bob Wright
{C} - Streets and Roads: Randal Johnes
{D} - Public Relations and Property Cleanup: Randal Johnes
{E} - Special Projects: Patti Hayes
> Patti Hayes – Findings on some current issues.
{F} - Attorney: Rick Fox
10. **OLD BUSINESS:**
{A} - Ordinances Second or Third Reading:
> 2009-T-002 – Second reading with amendments
> 2009-T-009 – Second reading with amendments
> 2009-T-011 – Second reading
> 2009-T-012 – Second reading

**Town of Greenville
P.O. Box 188
Greenville, In. 47124**

11. NEW BUSINESS:

{A} - Ordinances First Reading:

- > 2009-M-014 – If time allows
- > 2009-T-010 – If time allows
- > 2009-T-006 – If time allows
- > 2009-T-007 – If time allows
- > 2009-T-008 – If time allows
- > 2009-T-015 – If time allows
- > 2009-T-005 – If time allows

{B} – Citizens requesting to speak and subject:

12. ADJOURNMENT:

Next Monthly Meeting Monday May 11th, 2009 @ 7:00 PM

Note: to speak before the council your name must appear on agenda. President of the board may allow you to speak if he deems information you wish to present is a critical situation that would not be served by postponing the subject until the next meeting. To speak before the council contact Water Company Clerk or Council Member for proper form and Rules of Meetings.

General Fund	Budgeted	Spent	Remaining
Payroll	\$ 13,200.00	\$ 2,775.00	\$ 10,425.00
Marshal's Payroll	\$ 33,200.00	\$ 8,149.80	\$ 25,050.20
Employee Benefits	\$ 3,850.00	\$ 565.85	\$ 3,284.15
Computer Software	\$ 1,500.00		\$ 1,500.00
Office Supplies	\$ 500.00	\$ 131.00	\$ 369.00
Marshal's Fuel	\$ 3,000.00	\$ 456.80	\$ 2,543.20
Legal	\$ 8,000.00	\$ 2,720.00	\$ 5,280.00
Offical Bonds			\$ -
Travel	\$ 600.00		\$ 600.00
→ Legal Notices	\$ 700.00		\$ 700.00 ?
Insurance	\$ 3,200.00		\$ 3,200.00
Equipment & Repairs	\$ 1,638.00		\$ 1,638.00
Town Promotion	\$ 1,000.00	\$ 160.00	\$ 840.00
Trash Collection	\$ 1,000.00		\$ 1,000.00
Organizational Dues	\$ 750.00	\$ 703.00	\$ 47.00
Fire Protection	\$ 10,000.00		\$ 10,000.00
Total (\$18,472.46)	\$ 82,138.00	\$ 15,661.45	\$ 66,476.55
<u>Local Roads and Streets</u>			
Legal & Engineering	\$ 1,000.00		\$ 1,000.00
Legal Advertising	\$ 107.00		\$ 107.00
Maintenance ROW	\$ 3,250.00		\$ 3,250.00
Streets & Alleys	\$ 23,000.00		\$ 23,000.00
Equipment Maintenance	\$ 2,000.00	\$ -	\$ 2,000.00
Total (\$18,777.27)	\$ 29,357.00		\$ 29,357.00

Motor Vehicle

Streets Signs	\$ 2,000.00	\$ 1,866.44	\$ 133.56
Materials	\$ 428.00	\$ 37.78	\$ 390.22
Engineering	\$ 1,000.00		\$ 1,000.00
Insurance Streets	\$ 4,000.00		\$ 4,000.00
Telephone	\$ 2,300.00	\$ 378.46	\$ 1,921.54
Equipment Repairs	\$ 2,000.00	\$ 24.88	\$ 1,975.12
Street Lights	\$ 6,000.00	\$ 1,468.75	\$ 4,531.25
Snow Removal &	\$ 14,000.00	\$ 6,909.10	\$ 7,090.90
Streets & Alleys by	\$ 4,500.00		\$ 4,500.00
Other Maintenance	\$ 636.00		\$ 636.00
Total (\$19,880.60)	\$ 36,864.00	\$ 10,685.41	\$ 26,178.59

Cumulative Capital

Improvement (\$5,290.28)

Inter Fund Operation	\$ 6,000.00		\$ 6,000.00
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EDIT (\$14,230.47)

Other Capital Outlays	\$ 10,000.00		\$ 10,000.00
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Law Enforcement

Training (\$916.61)	\$ 1,000.00		\$ 1,000.00
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Riverboat (\$1,614.28)


Inter Fund Operation	\$ 6,100.00		\$ 6,100.00
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Donations (150.00)	\$ 150.00		\$ 150.00
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Income**Expenses****Profit/Loss**

Water Operating	\$ 63,936.41	\$ 53,638.44	\$ 10,297.97
Meter Deposits	\$ 266.87	\$ 325.00	\$ (58.13)
Bond and Interest	\$ 164.05		\$ 164.05

I hereby certify that each of the above listed vouchers and the invoices, or bills attached there to, are true and correct and I have audited same in accordance with IC5-11-10-1.6.

April 13, 2009

Fiscal Officer



ALLOWANCE OF ACCOUNTS PAYABLE VOUCHERS

TOWN OF GREENVILLE

MARCH/APRIL 2009

We have examined the Accounts Payable Vouchers listed on the foregoing Register of Accounts Payable Vouchers consisting of 1 pages and except for accounts payables not allowed as shown on the Register such accounts payables are hereby allowed in the total amount of \$ 5,333.70.

Dated this 13th day of April 2009.

Signatures of Governing Board

APPROPRIATION/ VOUCHER NUMBER	VENDOR	DESCRIPTION	PO NUM	INVOICE	DATE	AMOUNT	CK NUM	CK DATE	NO/PAY	MEMORANDUM
604001391.000	4476 JASON WAGONER	ACC 12529	0		//	50.00	1743	03/16/2009		
604001391.000	4477 JEFF BARBEY	ACC 20305	0		//	50.00	1744	03/16/2009		
604001391.000	4478 DON THIENEMAN	ACC 801002	0		//	50.00	1745	03/16/2009		
604001391.000	4479 DON THIENEMAN	ACC 801108	0		//	50.00	1746	03/16/2009		
604001391.000	4480 DON THIENEMAN	ACC 801111	0		//	50.00	1747	03/16/2009		
604001391.000	4481 MICHAEL SHELBURNE	ACC 80414	0		//	50.00	1748	03/16/2009		
601001354.000	4482 Edwardsville Water	ED # 1 7365000 GALLONS	0		//	9206.16	6899	03/19/2009		
601001354.000	4482 Edwardsville Water	ED #2 202000 GALLONS	0		//	252.41	6899	03/19/2009		
601001354.000	4482 Edwardsville Water	MONTHLY SURCHARGE	0		//	6775.73	6899	03/19/2009		
601001172.000	4483 PAYROLL	GARY	0		//	1961.95	873	03/19/2009		
601001172.000	4483 PAYROLL	AMY	0		//	1015.58	874	03/19/2009		
601001111.000	4483 PAYROLL	MICHAEL	0		//	761.06	875	03/19/2009		
601001111.000	4483 PAYROLL	STEVEN	0		//	973.64	876	03/19/2009		
601001120.000	4484 PAYROLL	JACK	0		//	493.32	877	03/27/2009		
601001120.000	4484 PAYROLL	HANZEL	0		//	400.34	878	03/27/2009		
601001120.000	4484 PAYROLL	TALBOTTE	0		//	481.36	879	03/27/2009		
601001120.000	4484 PAYROLL	RANDAL	0		//	405.34	880	03/27/2009		
601001120.000	4484 PAYROLL	CHARLES	0		//	380.34	881	03/27/2009		
601001120.000	4484 PAYROLL	PATTI	0		//	409.14	882	03/27/2009		
601001112.000	4485 PAYROLL	GARY	0		//	1961.95	883	04/02/2009		
601001112.000	4485 PAYROLL	AMY	0		//	1015.56	884	04/02/2009		
601001111.000	4485 PAYROLL	MICHAEL	0		//	761.06	885	04/02/2009		
601001111.000	4485 PAYROLL	STEVEN	0		//	1008.35	886	04/02/2009		
601001355.000	4486 Greenville Water Utility	OFFICE	0		//	17.33	0	04/08/2009		
601001320.000	4487 Jacobi Oil Services	GASOLINE FOR WORK TRUCKS	0	GREENW1	//	271.84	0	04/08/2009		
601001360.000	4488 GREENER, LINDA	OFFICE CLEANING	0		//	220.00	0	04/08/2009		
602001381.000	4489 CNA SURETY	GMAC COMMERCIAL MORTGAGE	0	060159442820	//	1450.00	0	04/08/2009		
601001351.000	4490 DUKE ENERGY	CLARK ST	0		//	84.40	0	04/08/2009		
601001351.000	4490 DUKE ENERGY	WIND HILL	0		//	9.40	0	04/08/2009		
601001351.000	4490 DUKE ENERGY	CLARK ST	0		//	42.89	0	04/08/2009		
601001351.000	4490 DUKE ENERGY	PEKIN ROAD	0		//	223.31	0	04/08/2009		
601001130.000	4491 HUMANA INC.	HEALTH INSURANCE	0	022561525	//	2066.34	0	04/08/2009		
601001350.000	4492 MCI	LONG DISTANCE	0	08676590249	//	29.94	0	04/08/2009		
601001210.000	4493 RELIABLE OFFICE SUPPLIES	HANGING FILES	0	XNC97600	//	145.45	0	04/08/2009		
601001350.000	4494 AT&T CORPORATION	OFFICE	0	8128239821	//	255.56	0	04/08/2009		
601001130.000	4495 AIG LIFE INSURANCE COMPAN	SEE ATTACHED BILLINGS	0	20505040403184	//	725.33	0	04/08/2009		
601001211.000	4496 Postmaster	BILLINGS	0		//	600.00	0	04/08/2009		
601001354.000	4497 Floyds Knobs Water	FK1 1850000	0		//	4144.00	0	04/08/2009		
601001354.000	4497 Floyds Knobs Water	FK2 62000	0		//	138.88	0	04/08/2009		

ACCOUNTS PAYABLE REGISTER
 APRIL 13, 2009

APPROPRIATION/ VOUCHER NUMBER	VENDOR	DESCRIPTION	PO NUM	INVOICE	DATE	AMOUNT	CK NUM	CK DATE	NO PAY	MEMORANDUM
601001230.000	4488 HOME DEPOT	SEE ATTACHED PAINTING SUPPLIES	0	0	//	88.62	0	04/08/2009		
601001360.000	4488 Environmental Laboratories	2 SAMPLES @ 14.00 EA	0	2009030047	//	28.00	0	04/08/2009		
601001360.000	4499 Environmental Laboratories	3 @ 14.00 EACH	0	2009030423	//	42.00	0	04/08/2009		
601001360.000	4500 STANTEC CONSULTING	SEE ATTACHED FOR PROFESSIONAL SERVI	0	175647023	//	2008.00	0	04/08/2009		
601001210.000	4501 OFFICE DEPOT	SEE ATTACHED	0	60116003546113	//	392.86	0	04/08/2009		
601001351.000	4502 HARRISON REMC	SUMP PUMP	0	12303	//	21.84	0	04/08/2009		
601001230.000	4503 HAUB HARDWARE	SEE ATTACHED	0	079615	//	48.83	0	04/08/2009		
601001360.000	4504 LAW OFFICES OF RICHARD FO	SEE ATTACHED	0	1283	//	446.28	0	04/08/2009		
601001320.000	4505 JACK'S AUTO CARE	4 TIRES @ 160.00 EA	0	27487	//	640.00	0	04/08/2009		
601001230.000	4506 ACE HARDWARE	SEE ATTACHED	0	1076	//	25.24	0	04/08/2009		
601001360.000	4507 DAN CHRISIANI EXCAVATING	FIX WATER LEAK	0	49468	//	525.00	0	04/08/2009		
601001360.000	4508 RIDGE TOP GRADING	FIX LAWNS HIGHWAY 150	0	473770	//	75.00	0	04/08/2009		
601001360.000	4508 RIDGE TOP GRADING	COVEY COURT	0	473770	//	75.00	0	04/08/2009		
601001360.000	4508 RIDGE TOP GRADING	OLD VINCENNES	0	473770	//	135.00	0	04/08/2009		
601001354.000	4509 Ramsey Water	100000 GALLONS	0		//	445.77	0	04/08/2009		
601001350.000	4510 Verizon Wireless	CELL PHONES	0	1982728419	//	253.45	0	04/08/2009		
601001601.000	4511 INDIANA DEPARTMENT OF REV	METERED SALES OF \$48274.72 X 7%	0	0	//	3379.23	0	04/08/2009		
601001590.000	4512 INDIANA DEPT OF REVENUE	TOWN COUNCIL STATE	0		//	20.12	0	04/08/2009		
601001590.000	4512 INDIANA DEPT OF REVENUE	TOWN COUNCIL COUNTY	0		//	6.81	0	04/08/2009		
601001590.000	4512 INDIANA DEPT OF REVENUE	TREASURER STATE	0		//	8.50	0	04/08/2009		
601001590.000	4512 INDIANA DEPT OF REVENUE	TREASURER COUNTY	0		//	2.88	0	04/08/2009		
601001590.000	4512 INDIANA DEPT OF REVENUE	MARSHAL STATE	0		//	87.54	0	04/08/2009		
601001590.000	4512 INDIANA DEPT OF REVENUE	MARSHAL COUNTY	0		//	29.62	0	04/08/2009		
601001111.000	4512 INDIANA DEPT OF REVENUE	STATE	0		//	153.14	0	04/08/2009		
601001111.000	4512 INDIANA DEPT OF REVENUE	COUNTY	0		//	51.80	0	04/08/2009		
601001112.000	4512 INDIANA DEPT OF REVENUE	STATE	0		//	263.62	0	04/08/2009		
601001112.000	4512 INDIANA DEPT OF REVENUE	COUNTY	0		//	89.16	0	04/08/2009		
601001120.000	4512 INDIANA DEPT OF REVENUE	STATE	0		//	104.58	0	04/08/2009		
601001120.000	4512 INDIANA DEPT OF REVENUE	COUNTY	0		//	35.36	0	04/08/2009		
601001111.000	4513 First Harrison Bank	FICA	0		//	279.24	0	04/08/2009		
601001111.000	4513 First Harrison Bank	MEDICARE	0		//	65.30	0	04/08/2009		
601001111.000	4513 First Harrison Bank	FEDERAL	0		//	519.98	0	04/08/2009		
601001112.000	4513 First Harrison Bank	FICA	0		//	480.72	0	04/08/2009		
601001112.000	4513 First Harrison Bank	MEDICARE	0		//	112.42	0	04/08/2009		
601001112.000	4513 First Harrison Bank	FEDERAL	0		//	900.80	0	04/08/2009		
601001120.000	4513 First Harrison Bank	FICA	0		//	195.86	0	04/08/2009		
601001120.000	4513 First Harrison Bank	MEDICARE	0		//	45.80	0	04/08/2009		
601001120.000	4513 First Harrison Bank	FEDERAL	0		//	207.67	0	04/08/2009		

ACCOUNTS PAYABLE REGISTER

APRIL 13, 2009

APPROPRIATION#	VOUCHER NUMBER	VENDOR	DESCRIPTION	PO NUM	INVOICE	DATE	AMOUNT	CK NUM	CK DATE	NOPAY	MEMORANDUM
601001131.000	4513	First Harrison Bank	FICA	0		//	955.87	0	04/08/2009		
601001131.000	4513	First Harrison Bank	MEDICARE	0		//	223.58	0	04/08/2009		
601001590.000	4514	ALLIANCE OF IND. RURAL WA	SEMINAR FIRST AID CERTIFICATION	0	5242	//	86.00	0	04/13/2009		
601001230.000	4515	SAM'S CLUB	SEE ATTACHED	0	7715090326090719	//	25.77	0	04/13/2009		
601001320.000	4516	JOHN JONES	FINAL PAYMENT COLLISION REPAIR	0		//	4045.27	0	04/13/2009		
601001360.000	4517	WRIGHT'S CONSTRUCTION	CUT UP TREE,HAUL AWAY	0		//	500.00	0	04/13/2009		
601001590.000	4518	Gary Getrost	SEE ATTACHED RECEIPTS	0		//	154.37	0	04/13/2009		
601001131.000	4519	INDIANA DEPT OF WORKFORCE	SEE ATTACHED	0		//	1286.53	0	04/13/2009		
*** Total ***							58516.30				

FUND SUMMARY OF A/P VOUCHERS

	FUND	EXPENDED
	601	58766.30
	602	1450.00
	604	300.00
*** Total ***		58516.30

I hereby certify that each of the above listed vouchers and the invoices, or bills attached there to, are true and correct and I have audited same in accordance with IC5-11-10-1.6.

April 13, 2009

Fiscal Officer

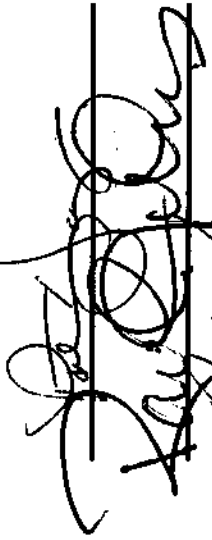


ALLOWANCE OF ACCOUNTS PAYABLE VOUCHERS

TOWN OF GREENVILLE

APRIL 13, 2009

We have examined the Accounts Payable Vouchers listed on the foregoing Register of Accounts Payable Vouchers consisting of 3 pages and except for accounts payables not allowed as shown on the Register such accounts payables are hereby allowed in the total amount of \$ 58,516.30.

Dated this 13th day of April 2009

Signatures of Governing Board

ACCOUNTS PAYABLE REGISTER

MARCH/APRIL 2009

APPROPRIATION/ P VOUCHER NUMBER	VENDOR	DESCRIPTION	PO NUM	INVOICE	DATE	AMOUNT	CK NUM	CK DATE	NO PAY	MEMORANDUM
101001113.000	8038 PAYROLL	BURKHART	0		03/31/2009	916.24	460	03/31/2009		
101001113.000	8039 PAYROLL	WISMAN	0		03/31/2009	133.59	461	03/31/2009		
101001113.000	8039 PAYROLL	BURKHART	0		03/31/2009	815.24	462	03/31/2009		
101001113.000	8039 PAYROLL	MOORE	0		03/31/2009	238.40	463	03/31/2009		
101001112.000	8040 PAYROLL	TRAVILLIAN	0		03/31/2009	66.57	464	03/31/2009		
101001111.000	8040 PAYROLL	BARCLAY	0		03/31/2009	104.75	465	03/31/2009		
101001111.000	8040 PAYROLL	RICHARDSON	0		03/31/2009	141.15	466	03/31/2009		
101001111.000	8040 PAYROLL	JOHNS	0		03/31/2009	109.75	467	03/31/2009		
101001111.000	8040 PAYROLL	WRIGHT	0		03/31/2009	84.75	468	03/31/2009		
101001111.000	8040 PAYROLL	HAYES	0		03/31/2009	113.54	469	03/31/2009		
101001112.000	8041 First Harrison Bank	TRAVILLIAN	0		03/31/2009	172.05	0	04/13/2009		
101001111.000	8041 First Harrison Bank	FED/FICA/MED WH	0		03/31/2009	94.13	0	04/13/2009		
101001113.000	8041 First Harrison Bank	FED/FICA/MED WH	0		03/31/2009	497.03	0	04/13/2009		
101001131.000	8041 First Harrison Bank	MATCHING FICA/MED	0		03/31/2009	270.95	0	04/13/2009		
101001112.000	8042 Greenville Water Utility	STATE/COUNTY WH	0		03/31/2009	11.38	0	04/13/2009		
101001111.000	8042 Greenville Water Utility	ST/CO WH	0		03/31/2009	26.93	0	04/13/2009		
101001290.000	8042 Greenville Water Utility	ST/CO WH	0		03/31/2009	117.16	0	04/13/2009		
101001591.000	8043 RANDAL JOHNS	WEBSITE DOMAIN	0	20090009	03/31/2009	110.00	0	04/13/2009		
101001290.000	8044 MARATHON PETROLEUM CO.	MARSHAL FUEL MARCH	0		03/31/2009	113.97	0	04/13/2009		
101001315.000	8045 LAW OFFICES OF RICHARD FO	REVIEW PLAN & SURVEY	0	1280	03/31/2009	17.00	0	04/13/2009		
101001315.000	8045 LAW OFFICES OF RICHARD FO	REVIEW ORDINANCES	0	1280	03/31/2009	93.50	0	04/13/2009		
101001315.000	8045 LAW OFFICES OF RICHARD FO	ATTEND MEETING	0	1280	03/31/2009	280.50	0	04/13/2009		
101001315.000	8045 LAW OFFICES OF RICHARD FO	PHONE CALLS JOHNS	0	1280	03/31/2009	25.50	0	04/13/2009		
201001324.000	8046 NEXTEL / SPRINT	MARSHAL'S CELL PHONES	0		03/31/2009	80.18	0	04/13/2009		
201001324.000	8047 AT&T CORPORATION	MARSHAL OFFICE PHONE	0		03/31/2009	46.66	0	04/13/2009		
201001351.000	8048 DUKE ENERGY	MARCH SERVICE	0		03/31/2009	353.78	0	04/13/2009		
201001361.000	8049 EARTH FIRST OF KENTUCKIAN	MARCH SERVICE	0	40720	03/31/2009	400.00	0	04/13/2009		
*** Total ***						5333.70				

FUND SUMMARY OF A/P VOUCHERS

	FUND	EXPENDED
	101	4453.08
	201	880.62
*** Total ***		5333.70

History Transactions by Type
 All Adjustments
 Date From 03/10/2009 through 04/13/2009

BOOK # 1		10470 EBERLE, PAUL			
Acct #	201962	Water Adjusted	\$-33.36	Trash Adjusted	
Audit #		Water Tax Adjusted	\$-2.33	Misc Adjusted	\$0.00
Type	Adjustment	Water Penalty Adjusted	\$0.00	Misc Penalty Adjusted	\$0.00
Date	04/01/2009			Total	\$-35.69 Balance
Desc	LEAK				\$77.00

BOOK # 1					
Acct #		Water Adjusted	\$-33.36	Trash Adjusted	
Audit #		Water Tax Adjusted	\$-2.33	Misc Adjusted	\$0.00
Type		Water Penalty Adjusted	\$0.00	Misc Penalty Adjusted	\$0.00
Date				Total	\$-35.69
Desc					

BOOK # 2		20305 BARBEY, JEFF			
Acct #	200034	Water Adjusted	\$0.99	Trash Adjusted	
Audit #		Water Tax Adjusted	\$0.07	Misc Adjusted	\$0.00
Type	Adjustment	Water Penalty Adjusted	\$0.00	Misc Penalty Adjusted	\$0.00
Date	03/16/2009			Total	\$1.06 Balance
Desc	CLOSED ACCOUNT REFUNDED DEPOSIT				\$0.00

BOOK # 2		23690 DYE, JUSTIN			
Acct #	199363	Water Adjusted	\$-116.90	Trash Adjusted	
Audit #		Water Tax Adjusted	\$-8.18	Misc Adjusted	\$0.00
Type	Adjustment	Water Penalty Adjusted	\$0.00	Misc Penalty Adjusted	\$0.00
Date	03/13/2009			Total	\$-125.08 Balance
Desc	LEAK				\$804.07

BOOK # 2		24520 KINZER, KAREN			
Acct #	200229	Water Adjusted	\$45.10	Trash Adjusted	
Audit #		Water Tax Adjusted	\$0.00	Misc Adjusted	\$0.00
Type	Adjustment	Water Penalty Adjusted	\$0.00	Misc Penalty Adjusted	\$0.00
Date	03/24/2009			Total	\$45.10 Balance
Desc	CUSTOMER USED WRONG NAME ON HER ACCOUNT				\$27.97

BOOK # 2		24575 ARDREY, JAMES			
Acct #	199170	Water Adjusted	\$-29.10	Trash Adjusted	
Audit #		Water Tax Adjusted	\$-2.04	Misc Adjusted	\$0.00
Type	Adjustment	Water Penalty Adjusted	\$0.00	Misc Penalty Adjusted	\$0.00
Date	03/10/2009			Total	\$-31.14 Balance
Desc	LEAK				\$65.61

BOOK # 2					
Acct #		Water Adjusted	\$-99.91	Trash Adjusted	
Audit #		Water Tax Adjusted	\$-10.15	Misc Adjusted	\$0.00
Type		Water Penalty Adjusted	\$0.00	Misc Penalty Adjusted	\$0.00
Date				Total	\$-110.06
Desc					

BOOK # 3		32520 SPENCER, JEFFREY			
Acct #	200033	Water Adjusted	\$-17.82	Trash Adjusted	
Audit #		Water Tax Adjusted	\$-1.24	Misc Adjusted	\$0.00
Type	Adjustment	Water Penalty Adjusted	\$0.00	Misc Penalty Adjusted	\$0.00
Date	03/16/2009			Total	\$-19.06 Balance
Desc	LEAK				\$-19.08

History Transactions by Type
All Adjustments

Date From 03/10/2009 through 04/13/2009

BOOK # 3

Water Adjusted \$-17.82
Water Tax Adjusted \$-1.24
Water Penalty Adjusted \$0.00
0.00000 0.00000

Trash Adjusted
Misc Adjusted \$0.00
Misc Penalty Adjusted \$0.00
Total \$-19.06

BOOK # 4

42220 HENDRICKS, CAROLYN
Acct #
Audit # 200231 Water Adjusted \$-0.65
Type Adjustment Water Tax Adjusted \$0.00
Date 03/24/2009 Water Penalty Adjusted \$0.00
Desc PENALTY WAIVED SEE OTHER ADJ

Trash Adjusted
Misc Adjusted \$0.00
Misc Penalty Adjusted \$0.00
Operator AMY
Total \$-0.65 Balance \$-45.10

42220 HENDRICKS, CAROLYN
Acct #
Audit # 200230 Water Adjusted \$-45.10
Type Adjustment Water Tax Adjusted \$0.00
Date 03/24/2009 Water Penalty Adjusted \$0.00
Desc CUSTOMER USED WRONG NAME ON CHECK POSTED

Trash Adjusted
Misc Adjusted \$0.00
Misc Penalty Adjusted \$0.00
Operator AMY
Total \$-45.10 Balance \$-44.45

BOOK # 4

Water Adjusted \$-45.75
Water Tax Adjusted \$0.00
Water Penalty Adjusted \$0.00
0.00000 0.00000

Trash Adjusted
Misc Adjusted \$0.00
Misc Penalty Adjusted \$0.00
Total \$-45.75

BOOK # 6

50994 THIENEMAN, DON
Acct #
Audit # 198284 Water Adjusted \$0.00
Type Adjustment Water Tax Adjusted \$0.00
Date 03/12/2009 Water Penalty Adjusted \$-0.65
Desc RETURN MAIL

Trash Adjusted
Misc Adjusted \$0.00
Misc Penalty Adjusted \$0.00
Operator AMY
Total \$-0.65 Balance \$79.25

BOOK # 6

Water Adjusted \$0.00
Water Tax Adjusted \$0.00
Water Penalty Adjusted \$-0.65
0.00000 0.00000

Trash Adjusted
Misc Adjusted \$0.00
Misc Penalty Adjusted \$0.00
Total \$-0.65

BOOK # 8

80414 SHELburne, MICHAEL
Acct #
Audit # 200035 Water Adjusted \$-1.42
Type Adjustment Water Tax Adjusted \$0.00
Date 03/16/2009 Water Penalty Adjusted \$0.00
Desc CLOSED ACCOUNT REFUND DEPOSIT

Trash Adjusted
Misc Adjusted \$0.00
Misc Penalty Adjusted \$0.00
Operator AMY
Total \$-1.42 Balance \$0.00

80503 KOETTER, MICHELLE
Acct #
Audit # 202671 Water Adjusted \$46.73
Type Adjustment Water Tax Adjusted \$3.27
Date 04/09/2009 Water Penalty Adjusted \$0.00
Desc SHOULD HAVE BEEN RECONNECT FEE

Trash Adjusted
Misc Adjusted \$0.00
Misc Penalty Adjusted \$0.00
Operator AMY
Total \$50.00 Balance \$0.00

History Transactions by Type
All Adjustments

Date: 04/13/2009 Time: 16:13:50

Date From 03/10/2009 through 04/13/2009

BOOK # 8

Water Adjusted	\$45.31	Trash Adjusted		Misc Adjusted	\$0.00	Misc Penalty Adjusted	\$0.00
Water Tax Adjusted	\$3.27			Misc Penalty Adjusted			
Water Penalty Adjusted	\$0.00						

Total \$48.58

SUMMARY

Water Adjusted	\$-151.53	Misc Adjusted	\$0.00
Water Tax Adjusted	\$-10.45	Misc Penalty Adjusted	\$0.00
Water Penalty Adjusted	\$-0.65		
	0.00000		
	0.00000		

Total \$-162.63

Attested John J. Parillo

[Handwritten Signature]

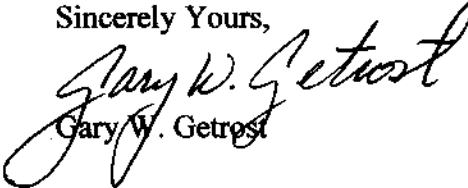
March 25, 2009

TO: Police Chief Billy Burkhart and the Greenville Town Council

This is to inform you of my resignation as a reserve officer of the Greenville Police Department effective immediately. I do apologize for any inconveniences this may have caused.

THANK YOU,

Sincerely Yours,


Gary W. Getrost



DAN'S ELECTRIC CO. INC.
 Residential & Commercial Wiring
 1945 HWY. 160
 (812) 283-7028
 CHARLESTOWN, IN. 47111

PROPOSAL SUBMITTED TO City of GRETCH		PHONE	DATE 4-13-2009
CITY, STATE AND ZIP CODE Greenville, IN.		JOB NAME Town Hall Building	JOB LOCATION
PROJECT	DATE OF PLANS	812-923-1099	JOB PHONE

I propose hereby to furnish material and labor -- complete in accordance with specifications below for the sum of
Nine Thousand Five Hundred ⁰⁰/₁₀₀ --- \$9500.00
 Payment to be made as follows:
Deposit on Acceptance of \$7500.00.
Balance of \$2000.00 on Completion of Job.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from specifications below including extra costs will be executed only upon written orders, and will become in full charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Authorized Signature: **DANNY KITCHEN**
 Note: This proposal may be withdrawn by us if not accepted within _____ days.

We hereby submit specifications and estimates for **To Furnish MATERIAL'S AND INSTALL AS FOLLOWS,**

1. 17KW GENERATOR AND TRANSFER CONTROLL. (L.P.) UNIT.
2. 1 GENERATOR PAD FOR MOUNTING.
3. PLUMB GAS LINE TO NEW GENERATOR FROM BASEMENT.
4. PROVIDE ALL LABOR AND INSTALL EQUIPMENT AS DESIGNED FOR EMERGENCY ELECTRIC POWER.

MATERIAL: GENERATOR, WIRE,
 \$7000.00 TRANSFER,
 PAD, PLUMB, LIFT CRANE
 INSTALLATION:
 \$2500.00

Acceptance of Proposal -- The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Sub-contractor's Signature: **Danny Kitchen 4/13/09**
 Owner's Signature: **X**

Date of Acceptance: **X**



DAN'S ELECTRIC CO. INC.
 Residential & Commercial Wiring
 1945 HWY. 150
 (812) 283-7028
 CHARLESTOWN, IN. 47111

PROPOSAL SUBMITTED TO GRAY GRETROST	PHONE	DATE 4-13-79
STREET	JOB NAME Town MAINTENANCE Bldg.	
CITY, STATE and ZIP CODE GREENVILLE IN.	JOB LOCATION	
PROJECT	DATE OF MEAS 912-923-1099	JOB PHONE

I propose hereby to furnish material and labor -- complete in accordance with specifications below, for the sum of:

Twelve Hundred Dollars and 00/100 dollars is **\$1200.00**

Payment to be made as follows:
DEPOSIT ON ACCEPTANCE OF \$800.00
BALANCE ON COMPLETION OF \$400.00

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standards and practices. Any alteration or deviation from specifications below involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Authorized Signature **HARRY K. KILGUS**

Note: This proposal may be withdrawn by us if not accepted within _____ days.

We hereby submit specifications and estimates for:

TO INSTALL AND SUPPLY MATERIAL AND LABOR FOR MAINTENANCE BUILDING.

- 1- BACK Fed TO 14 CIR. IN BUILDING**
 - 1- Remote cut DOOR RECEPTACLE.**
- FOR EMERGENCY PORTABLE GENERATOR.**

Acceptance of Proposal -- The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date of Acceptance **X**

Subcontract
 Signature **HARRY K. KILGUS**

Signature **X**



River City Controls, Inc.
Toll Free: (866) 781-8007

April 9, 2009

Greenville Water Utilities
Attn: Gary W. Getrost
P. O. Box 188
Greenville, IN 47124
FAX: (812) 923-1099

Dear Mr. Getrost:

River City Controls, Inc. is happy to provide you with this proposal for providing and installing a new Guardian 17kW backup generator at your facility. This generator comes equipped with a two line LCD digital controller, automatic transfer switch with built-in priority load center, and operates on LP gas. We have found that generators that operate on LP gas are much quieter when running compared to diesel powered generators.

During power outages like the ones we have experienced lately (wind storm, ice storm, ect.) this new Guardian generator will supply enough power to run your computers, 1 circuit of AC receptacles, and 1 circuit of lighting. It will also have enough power to run your furnace in winter or your air conditioner in summer.

Please Note: This 17kW generator will also be able to power your water heater but, only when the air conditioner is not in use.

The price for this proposal, providing and installing a new Guardian 17kW backup generator at your facility including: getting any permits needed, mounting pad, wiring of unit by a licensed master electrician, and training on the generator's operation is \$6930.00.

Please Note: Customer is to provide the LP gas connection for the unit. This service is usually provided by the LP gas supplier.

Below I have listed an option you may wish to consider when purchasing this generator:

Option 1: River City Controls can also provide and install the above new Guardian backup generator in a 20kW model. This model would have all the same features as the 17kW model and it would be able to power your water heater when the air conditioner is in use. The price for this model is \$7890.00.

River City Controls would like to thank you for the opportunity to provide you with this proposal. If you have any questions, please give us a call at (866) 781-8007 or (502) 396-0547.

Thank you,



Lisa Bailey

President, River City Controls, Inc.



ELECTRIC LLC
 7010 Kiesler Rd.
 Greenville, IN 47124
 Phone: (812)923-8772

PROPOSAL SUBMITTED TO:

GREENVILLE WATER UTILITY

WORKSITE:

DATE MAR 31, 2009

WE HEREBY PROPOSE TO FURNISH ALL THE MATERIALS AND PERFORM ALL OF THE LABOR NECESSARY FOR THE COMPLETION OF:

INSTALL 16,000 WATT STANDBY GENERATOR AT OFFICE BUILDING. GENERATOR WILL BE SET BY ELECTRIC SERVICE. ALL TRANSPORTATION, SETTING OF UNIT, WIRING, GAS PIPING INCLUDED FOR COMPLETE SYSTEM. \$6575⁰⁰

INSTALL TRANSFER PANEL ON ELECTRIC SERVICE FOR STORAGE BUILDING. THIS INCLUDES TRANSFER PANEL, OUTSIDE RECEPTACLE, CORD FOR HOOKUP TO GENERATOR. \$850⁰⁰ (NO GENERATOR IN THIS PRICE)

FAILURE TO PAY THE BALANCE WHEN DUE SHALL OBLIGATE THE PURCHASER TO PAY ALL COSTS OF COLLECTION TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW. THOSE EXPENSES MAY INCLUDE, REASONABLE ATTORNEY FEES, AND COURT COST.

FOR THE SUM OF

ABOVE

TO BE PAID ON RECEIPT OF

MINIMUM RECOMMENDED

BALANCES SHALL BEAR INTEREST AT 1.5% PER MONTH. ANY ALTERATION OR DEVIATION FROM THE ABOVE PROPOSAL INVOLVING EXTRA COSTS WILL BE EXECUTED ONLY UPON WRITTEN ORDERS, AND WILL BECOME AN EXTRA CHARGE OVER AND ABOVE THE ESTIMATE.

RESPECTFULLY SUBMITTED BY:

Scott Kiesler

KIESLER ELECTRIC

NOTE: THIS PROPOSAL IS VALID FOR 30 DAYS FROM ABOVE DATE.

ACCEPTANCE OF PROPOSAL

THE ABOVE PRICES, SPECIFICATIONS, AND CONDITIONS ARE SATISFACTORY AND ARE HEREBY ACCEPTED. YOU ARE AUTHORIZED TO DO THE WORK AS SPECIFIED. PAYMENT WILL BE MADE AS OUTLINED ABOVE.

DATE OF ACCEPTANCE

SIGNATURE OF PURCHASER

LIMITED WARRANTY

Service and repairs shall be made to all equipment without charge for one year from date of installation, Provided that the repair was made necessary by defects in material or workmanship.

6 MONTH FACTORY WARRANTY OF MATERIALS.

PATTI HAYES NOTES:

Item No. 1

Questions have arisen in the use and definition of the title "Commissioner". In my research and talking to The Indiana Law Enforcement Academy, I have found that there is no such thing in the State of Indiana as a Police Commissioner, Marshall's Dept. Commissioner or any type of Law Enforcement Commissioner. And therefore the title itself has no Authority. There can be a Committee Chair person or a Public Safety Director and those titles only hold civilian powers and authority, but no Police Powers.

Questions have arisen concerning individuals that may possess a badge that possibly may not have the authority or powers to do so. These questions have come from talking to some of the Floyd County Sheriff's Dept's Staff. And they have questioned such individuals showing up on runs or scenes that they may have no authority to do so. If such authority does exist, then clarification is required in which there is documentation, evidence of training and some sort of proof of that gives an individual the authority to conduct police duty's and or gives them police powers.

Item No. 2

~~With the passing of our respected and fellow Council Member, Hanzel Barclay, as hard as it is to have to consider filling his seat, it has to be done. Since Hanzel was a Democrat it is my understanding that the Democratic Party has 30 days to appoint someone. If the Democratic Party does not appoint someone in those 30 days then the responsibility falls on the Council members to do so. If the responsibility does fall on the council I would encourage all current members to take special care and consideration. The people voted for Hanzel and as you all know with his years of dedication and public service, not with just the council but also his years with the Indiana State Police and as a valued and respected citizen of Greenville, his shoes will be hard to fill.~~

Item No. 3

I would like to have the council consider honoring Hanzel in some way.

DISCUSSIONS

Go

Information Maintained by the Office of Code Revision Indiana Legislative Services Agency
04/13/2009 05:59:37 PM EDT

IC 36-8-9

Chapter 9. Town Board of Metropolitan Police Commissioners

IC 36-8-9-1**Application of chapter**

Sec. 1. This chapter applies to all towns.

As added by Acts 1981, P.L.309, SEC.60.

IC 36-8-9-2**Establishment of board**

Sec. 2. The legislative body of a town may by ordinance:

(1) abolish the office of town marshal; and

(2) establish a board of metropolitan police commissioners (referred to as "the board" in this chapter).

As added by Acts 1981, P.L.309, SEC.60. Amended by P.L.3-1987, SEC.567; P.L.101-1998, SEC.4.

IC 36-8-9-3**Repealed**

(Repealed by P.L.12-2001, SEC.2.)

IC 36-8-9-3.1**Membership**

Sec. 3.1. (a) An ordinance adopted under section 2 of this chapter must provide as follows:

(1) The board must consist of either of the following number of members:

(A) Three (3) members. If the ordinance provides for a three (3) member board, not more than two (2) board members may be members of the same political party, if individuals who satisfy this requirement can be found to serve on the board.

(B) Five (5) members. If the ordinance provides for a five (5) member board, not more than three (3) board members may be members of the same political party, if individuals who satisfy this requirement can be found to serve on the board.

(2) Each board member must be a resident of the town.

(3) The town legislative body shall appoint each board member.

(4) Except as provided in subdivision (5), the term of each board member expires January 1 of the third year after the member's appointment.

(5) The ordinance must provide for staggered terms of the board members and the method for staggering the terms. If the board has three (3) members, the term of one (1) board member must expire each year; If the board has five (5) members, the terms of not more than two (2) board members may expire each year.

(6) The town legislative body may remove a board member for any cause that the legislative body considers sufficient.

(7) The town legislative body may not appoint a police officer

employed by the town to serve on the board.

(b) The ordinance may provide that a member of the town legislative body may serve as an ex officio member of the board. If the ordinance permits members of the town legislative body to serve as members of the board, the following apply:

(1) The ordinance must state the maximum number of board members that may also be members of the town legislative body.

(2) The ordinance must provide either of the following:

(A) That a board member vacates the member's position on the board when the member is no longer a member of the town legislative body.

(B) That a board member may continue to serve until the end of the board member's term even if the board member vacates the member's position on the town legislative body.

(3) A board member who is also a member of the town legislative body may not receive compensation as a board member provided under subsection (g).

(4) A board member who is also a member of the town legislative body is not required to post the bond required by subsection (f).

(c) This subsection does not apply to a board member who is a member of the town legislative body. Before performing any function of a board member, an individual shall take and subscribe an oath or affirmation of office before the circuit court clerk of the county in which the town is located.

(d) This subsection applies to all board members. Before performing any function of a board member, an individual shall take and subscribe an oath or affirmation before the circuit court clerk of the county in which the town is located that, in each appointment or removal made by the board to or from the town police department under this chapter, the board member will not appoint or remove a member of the town police department because of the political affiliation of the person or for another cause or reason other than that of the fitness of the person.

(e) The circuit court clerk shall file oaths and affirmations required by this section among the circuit court clerk's records.

(f) This subsection does not apply to a board member who is a member of the town legislative body. A board member shall give bond in the penal sum of five thousand dollars (\$5,000), payable to the state and conditioned upon the faithful and honest discharge of the member's duties. The bond must be approved by the town legislative body.

(g) The town legislative body shall fix the salary of board members who are not members of the town legislative body. A board member's salary is payable monthly out of the town treasury.

(h) If the board has three (3) members, the town legislative body may amend the ordinance at any time to increase the number of board members to five (5). The amended ordinance and the appointment of board members must satisfy all the requirements of

subsection (a).

(i) A board established in compliance with section 3 of this chapter (before its repeal) is considered a board established under this section. A town legislative body may amend an ordinance adopted in compliance with section 3 of this chapter (before its repeal) as provided in this section.

As added by P.L.12-2001, SEC.1.

IC 36-8-9-4

Powers and duties of board

Sec. 4. (a) The board may appoint, subject to the qualifications for employment determined by the board and approved by the town legislative body, as many persons as necessary to serve in the police department of the town. One (1) person shall be appointed to serve as the police chief. The board may also appoint other employees that are necessary to carry on the work of the police department.

(b) The board may recommend and the town legislative body shall determine the compensation to be paid to members of the police department in amounts that are just and reasonable.

(c) All persons appointed must be of good moral character and serve only during good behavior. The board constitutes the safety board of the town for purposes of the suspension, demotion, or dismissal of any member of the police department. Proceedings for the suspension, demotion, or dismissal of any member of the police department shall be conducted in the manner prescribed by IC 36-8-3-4. The disciplinary provisions of IC 36-8-3-4.1 also apply to the safety board and the police chief.

(d) The board may make general and special rules for the government and discipline of the police department and may make special and general orders to the department through the police chief, who is the executive head of the department.

As added by Acts 1981, P.L.309, SEC.60. Amended by Acts 1981, P.L.315, SEC.6; Acts 1982, P.L.33, SEC.41; P.L.198-1984, SEC.2; P.L.101-1998, SEC.5; P.L.65-2008, SEC.3.

IC 36-8-9-5

Appropriations

Sec. 5. The town legislative body shall appropriate a sum sufficient to pay the salaries of the members of the town police department.

As added by Acts 1981, P.L.309, SEC.60.

IC 36-8-9-6

Statutes governing police departments

Sec. 6. (a) The operation, management, and control of a police department under this chapter is governed by statutes applicable to the management and control of other municipal police departments if those statutes are consistent with this chapter.

(b) The members of the police department may exercise all powers granted to members of police departments by other statutes.

The members of the police department are entitled to all the rights, powers, and privileges granted by statute to members of police departments.

As added by Acts 1981, P.L.309, SEC.60.

IC 36-8-9-7

Probationary appointments

Sec. 7. (a) The board may provide that all appointments to the police department are probationary for a period not to exceed one (1) year.

(b) If the board finds, upon the recommendation of the chief of the department during the probationary period, that the conduct or capacity of a member is not satisfactory, the board shall notify the member in writing that the member is being suspended or that the member will not receive a permanent appointment.

(c) If a member is notified that the member will not receive a permanent appointment, the member's employment immediately ceases. Otherwise, at the expiration of the probationary period, the member is considered regularly employed.

As added by P.L.98-2000, SEC.28.

IC 36-8-9-8

Payment of line of duty health care expenses for police

Sec. 8. (a) A town shall pay for the care of a full-time, paid police officer who:

- (1) suffers an injury; or

(2) contracts an illness;
during the performance of the officer's duty.

(b) The town shall pay for the following expenses incurred by a police officer described in subsection (a):

- (1) Medical and surgical care.
- (2) Medicines and laboratory, curative, and palliative agents and means.
- (3) X-ray, diagnostic, and therapeutic service, including during the recovery period.
- (4) Hospital and special nursing care if the physician or surgeon in charge considers it necessary for proper recovery.

(c) Expenditures required by subsection (a) shall be paid from the general fund of the town.

(d) A town that has paid for the care of a police officer under subsection (a) has a cause of action for reimbursement of the amount paid under subsection (a) against any third party against whom the police officer has a cause of action for an injury sustained because of, or an illness caused by, the third party. The town's cause of action under this subsection is in addition to, and not in lieu of, the cause of action of the police officer against the third party.

As added by P.L.150-2002, SEC.2.

Indiana

The trustees of several county townships elected one of the trustees the superintendent of schools, and the trustee voted for himself in Hornung v. State ex rel. Gamble, 19 N.E. 151 (Ind. 1888). In holding the election illegal, the Court declared, that:

A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence, and primarily for the benefit of the public. It is also the duty of the public officer having the appointing power to make the best available appointment, and, in such a case, the right of appointment is not in any sense the property of the officer possessing appointing power. It is the duty of the law to secure the utmost freedom from personal interest or undue influence in the selection of public officers, whether elective or appointive. [At 153.]

The Court then pointed out that the Oregon Supreme Court in an earlier case had concluded that a city council member could not vote for himself to become city marshal because the vote violated the council's procedures, and "Also that it is contrary to the policy of the law to permit a public officer having an appointing power to use such power as a means of conferring an office upon himself," and declared that, "We concur in both of the conclusions reached as above by the Supreme Court of Oregon, and consequently feel constrained to hold that Hornung's vote for himself for the office of county superintendent was contrary to public policy, and for that reason an utterly illegal vote." [At 154.]

Towns

Ed Gohmann, Counsel, Public Employees Retirement Fund
 Frank McCain, Conseco Insurance

I have first included a brief chart containing a simplified structural comparison of the two systems. Following that, I have addressed the major issues to be considered by the Town Council in its deliberations.

Several statutory provisions remain unclear and issues remain without conclusions because, to the best of anyone's knowledge, no town has adopted the model Police Merit Commission system. I raise this not for the proposition that, "since no one else has done it, we should not do it," but, rather because gaps have been left in the statutes that might otherwise have been filled had this transition ever been tested. In those instances I have indicated what could be the most conservative approach for the Town Council to consider since this is a very litigious area of the law.

**STRUCTURAL COMPARISON OF THE TOWN OF AVON
 METROPOLITAN BOARD OF POLICE COMMISSIONERS
 & THE MODEL MERIT COMMISSION SYSTEMS**

**Metropolitan Board of Police
 Commissioners**

Model Merit Commission System

Appointment of Members	
5 Members 3 year Terms Members are appointed by the Town Council Of the 5 members only 3 can be of the same political party Council Members may be serve on the Board Must be legal residents of the town Must be of good moral character Must be bonded Salary	5 Members 4 year terms The Town Council President appoints 2 members of different political parties 1 member is appointed by the Town Council 2 members from different political parties are elected by majority of the police officers Must be legal residents of the town for 3 prior years Must be of good moral character May not be employed by the town Per diem
Removal of Members	
May be removed for sufficient cause by the Town Council	Serves at the pleasure of the appointing or electing authority and may be removed at any time
Appointment of Police Officers	
Board appoints members of the police department subject to the approval of the Town Council	Merit Commission appoints members of the police department pursuant to statutory requirements
Promotion of Police Officers	
Statute is silent	Merit Commission adopts rules for promotion process pursuant to statutory requirements

Discipline of Police Officers	
Board disciplines pursuant to statutory requirements	Merit Commission disciplines pursuant to statutory requirements
Appointment of Upper Level Policymaking Officers	
By Board	By Town Council President
Demotion of Upper Level Policymaking Officers	
Town Council President with approval of majority of Council	Town Council President* or Town Council President with approval of majority of Council * Statutes somewhat unclear See, IC 36-5-2-13 and IC 36-8-3.5-11

Major Considerations

I. Control by Town Council

The Town Council is elected by the public, so a system controlled by the elected officials may be considered to be the most responsive to the public. If the public does not like the way the police department is operating, they can effect change by way of the ballot box. Therefore, each system should be examined in light of the amount of control the Town Council may exert over it.

A. Metropolitan Board of Police Commissioners

1. All members appointed by Town Council.
2. All members may be removed by Town Council for sufficient cause.
3. Town Council members may serve on the Board.
4. Town Council fixes the salary of the Board members.
5. Town Council may have input on promotions.
6. Town Council may demote upper level policymaking officers.

B. Merit Commission

1. Two members are elected by the members of the police department.
2. Terms of members are longer.
3. All members serve at the pleasure of the appointing or electing authorities.
4. Town Council members may not serve on the Commission.
5. Town Council establishes per diem for each day of service.
6. Town Council has no input on promotions.
7. Upper level policymaking officers are appointed by the Town Council President.
8. Upper level policymaking officers are demoted either by the Town Council President alone or with the approval of the Town Council. This is one of the areas where it is difficult to read the statutes in harmony. Therefore, the most conservative

approach would be to assume it takes the approval of the Town Council.

II. Political Influence.

An argument in support of the model Merit Commission system is that it eliminates political influence. Therefore, each system should be examined in light of the potential for political influence.

A. Metropolitan Board of Police Commissioners

1. Statutory requirements for political diversity of Board members.
2. Board members are required to take an oath that they will not appoint or remove a member of the police department because of political affiliation.

B. Merit Commission

1. Statutory requirements for political diversity of Commission members.

C. Miscellaneous

1. Members of the police department may be candidates for elective office and serve in that office if elected.
2. Lawsuit filed within last month by FOP against City of Indianapolis is indicative that model Merit Commission system is not a guarantee against all political influence, since the Chief still has input once the promotion list is submitted by the Commission.

III. Job Security

Another argument in support of the model Merit Commission system is job security or the guarantee of fairness.

A. Metropolitan Board of Police Commissioners

1. Because discipline is governed by statutory requirements, police officers are most likely granted a protected property interest in their employment. This system has not been tested like the model Merit Commission system, but the arguments would be analogous.

B. Merit Commission

1. The model Merit Commission system grants the police officers a protected property interest in their employment.
2. Once the system is adopted, the Town Council cannot revert to former system because of the rights created.

C. Miscellaneous

1. Indiana is an at-will employment State, so other Town employees do not automatically have the same rights as merit officers.
2. Firefighters for the Town are under a merit system and have a protected property interest in their employment.

IV. Residency

Residency is an issue that affects cost, so it should be examined when considering a change in systems.

A. Metropolitan Board of Police Commissioners

1. Residency requirements for members of the police department
 - a. reside within the county in which the Town is located;
 - b. reside within fifteen (15) miles of the corporate boundaries of the Town;
 - c. have adequate means of the transportation into the Town; and
 - d. maintain in their residence telephone service with the Town.

B. Merit Commission

1. If IC 36-8-4-2 applies, members of the police department must reside:
 - a. within the county in which the Town is located; or
 - b. in a county that is contiguous to the county in which the Town is located.
2. Although IC 36-8-4-2 refers to "town," IC 36-8-4-1 provides that the chapter only applies to cities.
3. If IC 36-8-4-2 does not apply, residency requirements are the same as those under the Metropolitan Board of Police Commissioners.
4. The most conservative approach is to assume that the police officers under a model Merit Commission system can live in a contiguous county, because this is one of the gaps in the law that has not been tested, but may be challenged.

V. Future of Metropolitan Board of Police Commissioners

Another one of the holes in the statutes surrounding the various police department governing systems is the fact that they are silent with respect to what happens to a Metropolitan Board of Police Commissioners in the event a model Merit Commission is created under the model Merit Commission statutes.

The Safety Board generally makes policy for a police department. The appointing authority of a town (the council) is considered the Safety Board of the town. However, in a town with a Board of Metropolitan Police Commissioners, that Board is considered the Safety Board of the town for police department purposes.

Because of the manner in which the Board is established, by ordinance, it is likely that in the event the Town adopts the model Merit Commission system, the ordinance establishing the Metropolitan Board of Police Commissioners could be repealed. The powers of the newly created model Merit Commission would clearly overlap with those of the existing Board. Because they would be duplicative, it would seem logical that the Metropolitan Board of Commissioners would dissolve. However, the statute provides no method for eliminating the Board, and therefore, the most conservative approach, again, would be to presume that the Metropolitan Board of Police Commissioners would remain in existence as the Safety Board, rather than the Town Council.

VII. Costs

Potential additional costs or cost reductions with respect to changing to the model Merit Commission system are necessarily a major consideration for the Town Council.

- A. Salary of Metropolitan Board of Police Commissioners plus or vs. per diem of Merit Commission members.
- B. Merit Commission submits a proposed budget to the Council. The

- Council "shall" include in its budget "an amount sufficient for the necessary expenses of the commission."
- C. A performance rating must be made at least once every 6 months for each member of the police department; Associated costs could include testing and lost man hours.
 - D. Bond required for members of Metropolitan Board of Police Commissioners.
 - E. Pension - Probably no difference. This is another situation where the issue of a change in systems has not been addressed by statute. IC 36-8-8-3(a) provides, "If a town establishes a board of metropolitan police commissioners, or if a town becomes a city, the municipality shall participate in the 1977 fund." There is no mention as to what occurs if a town adopts the model merit system. In checking with PERF, this was not a situation that they had ever contemplated, however they were not inclined to remove members from the 1977 fund.
 - F. Assuming the residency requirements would change under the model Merit Commission system, there would be costs associated with the police officers' take-home vehicles.
 - 1. Insurance - Frank McCain, the Town's insurance agent, has stated that there would be little or no increase in the cost of automobile insurance.
 - 2. Liability - Any time road miles are increased, the Town's potential liability for property damage or personal injury is increased.
 - 3. Fuel - potential of \$1,000 + per vehicle (See chart provided by Tom Klein)
 - 4. Vehicle replacement - Based upon additional mileage, and not additional risk of liability, the replacement cost over a ten-year period could exceed \$78,000. (See chart provided by Tom Klein).
 - 5. Additional wear and tear on vehicles, maintenance, and replacement parts.

VIII. Conclusion

This report has addressed the major issues to be considered by the Town Council when making its informed decision. One option not addressed by this report is the possibility of a merit commission ordinance adopted pursuant to IC 36-1-4-14, rather than the model merit commission system. Since this option was not contained in the referendum before the Town Council, I was not requested to include it in this report. This report has provided you with facts, some arguments, and many issues. You must reach your own conclusions. I would be pleased to answer any questions of the Town Council.



Avon Gov



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Comparison: Board of Police Commissioners and Police Merit Board

[back](#)

Date of Record: March 26, 2002

Avon Town Council
6570 E. U.S. Hwy. 36
Avon, Indiana 46123

- HOME
- GOVERNMENT
- BUSINESS
- COMMUNITY
- PUBLIC SAFETY
- RECREATION

Dear Town Council Members:

Although I do not know the entire history of this issue in this community, I do know enough to know that it has become a very divisive issue.

I am sure many think that because I was contacted by the Town Manager and engaged by the Town Council, my report will reflect their views. However, you should also know that I spent 13 years of my career as an attorney for the City of Indianapolis and Marion County and one of my clients there was the Police Merit Board.

What both sides may not realize is that my report contains no recommendations. My engagement was not to make this decision for you. You are the elected policy makers for this Town. This report attempts to set forth in concise terms the facts and arguments surrounding the Town's current system of police department governance with that of a model merit system, which you have been asked to consider. It is meant to be a comparative analysis of the two systems, including issues to be addressed by the Town Council when considering a change in systems. Whether to make that change is strictly a policy decision for the Town Council.

Very truly yours,


Sue A. Beesley

INTRODUCTION

This report is an analysis and not a recommendation. It contains a comparison of a police department operating with a Metropolitan Board of Police Commissioners with one operating with the model Police Merit Commission system. It also attempts to recognize issues for the Town Council to consider related to any change in systems.

In addition to statutory and case law research, I spoke with and received information from the following individuals:

Tom Klein, Avon Town Manager
Jeff Ritorto, Avon Chief of Police
Greg Zusan, President, Avon Town Council
Jodie Woods, General Counsel, Indiana Assn. of Cities and

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Product

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Title: Appointing a Member of City Council to Run the Police Department
Summary: MTAS was asked whether a member or members of the city council can be appointed by the city council to run the police department.
Original Author: Hemsley, Sid
Co-Author:
Product Create Date: 01/21/97
Subject: City council--Procedure; Personnel--Selection and recruitment
Type: Legal Opinion

Legal Opinion:

Reference Documents:

Text of Document: January 21, 1997

You have the following question: Can a member or members of the city council be appointed by the city council to run the police department? The answer is generally no, for at least one, and perhaps two, reasons.

1. Generally, members of governing bodies cannot vote for themselves to become officers over which they have the power of appointment and supervision.
2. Generally, members of governing bodies cannot be appointed to offices over which they have the power of appointment and supervision.

As I understand the fact, members of the city council voted for themselves to become "commissioners." For that reason, I will attempt to answer both questions.

Background

Your city has a private act charter which provides for a weak mayor-council form of government. A mayor in Tennessee has only those administrative and legislative powers granted to him by the municipal charter or by general law. [Weil, Roth & Co. v. Mayor and Aldermen of Newbern, 148 S.W. 680 (Tenn. 1912); Reeder v. Trotter, 215 S.W. 400 (Tenn. 1919); Anderson v. Town of Gainesboro, 17 TAM 12-27 (Tenn. 1992).] The mayor has few powers under that charter, the result of which is that virtually all of the legislative and administrative powers reside in the city council as a whole. With particular respect to the police department, Section 18(12) of the city charter provides that "Said Town Council shall have the power by ordinance or resolution within the corporate limits of Said Town.... To regulate the police of the Town...." In other words, the power of regulation of the police department belongs to the whole board.

Question 1

The city charter is obviously silent on the question of whether a member of the city council can vote for himself to become a "commissioner" over the police department, because the charter does not contemplate such an arrangement.

However, in State ex rel. v. Thompson, 246 S.W.2d 59 (Tenn. 1952), the city commission

(actually the city council) of Paris, Tennessee, appointed one of its members the city manager. The member of the council appointed city manager voted for himself. The main questions in that case were whether the city council had the authority to appoint one of its own members the city manager, and whether the city councilman appointed city manager vacated the former office by accepting the latter office. However, in addressing those questions the Court incidentally looked at the question of whether the member of the city council could vote for himself to become city manager. Citing 42 Am Jur, page 955, section 97 (presently found at 63A Am Jur 2d, Public Officers and Employees, section 100), the Court said:

So, it is contrary to public policy to permit an officer having an appointing power to use such power as a means of conferring an office upon himself, or to permit an appointing body to appoint one of its own members. [Emphasis is mine.]

The Court followed that up with a similar citation from *McQuillin on Municipal Corporations* revised Volume 2, page 159, section 477 (presently found in 3 *McQuillin, Municipal Corporations*, 3rd Revised ed., sec. 12.75):

Pursuant to the general rule, a council, although possessed of the power of appointment may not select one if its own members as clerk of the council, or as a member of the board of assessors. *For a like reason, a member cannot vote to confirm his own appointment to office. [Emphasis is mine.]*

It was subsequently held in *Jackson v. Hensley*, 715 S.W.2d 605 (Tenn. App. 1986) that the common law could be "overturned" by statute. There Roberts, a member of the Roane County Commission, was elected by the Commission to the office of trustee under a statute that provided that any member of a county commission who accepted the nomination to that (and other) offices "automatically" lost his office as commissioner. Quoting *Thompson* for the proposition that, "it is contrary to public policy to permit an officer having an appointing power to use such power as a means of conferring an office upon himself, or to permit an appointing body to appoint one of its own members," [At 606.] The Court declared that the effect of the statute:

.... permits county legislative bodies to nominate one of their own members for a vacancy in office, but prevents the nominee from voting for himself by divesting him of his commission seat upon his acceptance of the nomination. [At 607.]

Thus, it is clear from *Thompson* and *Jackson* that the general rule is that members of governing bodies cannot vote for themselves to fill an office over which they have the power of appointment. That same issue has arisen in Connecticut, Pennsylvania, Indiana, and New Jersey. The Courts in those states follow the same general rule. However, the New Jersey courts make an important exception: Where the statute in question requires the appointment to be made from among the members of the governing body. There is no such statute in Tennessee with respect to your city.

Connecticut

In *State ex rel. Bergin v. Goodrich*, 84 A. 99 (Conn. 1912), Bergin was a member of the city board of education. The board elected him to the office of clerk of the board, and Bergin voted for himself. The mayor, who was the presiding officer of the board refused to declare Bergin elected, arguing that the city charter prohibited the employment by any board of any

of its members, and required that all officers of the city serve without pay. In holding Bergin's election illegal, the Court declared that whether or not Bergin was eligible under the city's charter to serve as school board clerk was irrelevant:

It matters not whether he was eligible or ineligible. He was one of the seven members of the board; he voted for himself; and without his vote there was no election. He could not be elected by his own vote, and was not elected. [Citations omitted.] [At 99.]

In State ex rel. Kenney v. Ranslow, 154 A.2d 526 (Super Ct. Conn. 1959), the Court declared that the chairman of the board of police commissioners could not vote for himself to become the chief of police. [However, his election was valid because even without his vote, he had the requisite majority under Connecticut law.]

Pennsylvania

Members of a town board of supervisors could not vote to appoint themselves members of a Board of Municipal Authorities on the ground that such votes were against public policy in Commonwealth ex rel. McCreary v. Major, 22 A.2d 696 (Penn. 1941). Said the Court:

We have no difficulty reaching our conclusion, and are of the opinion that well-established public policy prohibits respondent and his colleagues from using their official appointing power as councilmen of the City of Beaver Falls to appoint themselves members of the Board of Authority. This court said, as early as 1803, in Commonwealth v. Douglass, 1 Bin. 77, 84: "One having a discretionary authority to appoint a fit person to a public office appointing himself seems a solecism in terms; and it cannot be deemed the fulfilment of his duty." [At 688.]

In Coltar v. Warminister Township, 302 A.2d 859 (Pa. Cmnlth. 1973), members of the board of town supervisor could not vote for themselves to become directors of various town functions, principally because there was a township manager, and the office of township manager and township supervisor were incompatible offices under statute. But the Court, citing Major, added an additional reason: "It is against public policy, in the absence of specific legislative authorization, for a public official to appoint himself to another public office." [At 862.]

Indiana

The trustees of several county townships elected one of the trustees the superintendent of schools, and the trustee voted for himself in Hornung v. State ex rel. Gamble, 19 N.E. 151 (Ind. 1888). In holding the election illegal, the Court declared, that:

A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence, and primarily for the benefit of the public. It is also the duty of the public officer having the appointing power to make the best available appointment, and, in such a case, the right of appointment is not in any sense the property of the officer possessing appointing power. It is the duty of the law to secure the utmost freedom from personal interest or undue influence in the section of public officers, whether elective or appointive. [At 153.]

The Court then pointed out that the Oregon Supreme Court in an earlier case had concluded that a city council member could not vote for himself to become city marshal

because the vote violated the council's procedures, and "Also that it is contrary to the policy of the law to permit a public officer having an appointing power to use such power as a means of conferring an office upon himself," and declared that, "We concur in both of the conclusions reached as above by the Supreme Court of Oregon, and consequently feel constrained to hold that Hornung's vote for himself for the office of county superintendent was contrary to public policy, and for that reason an utterly illegal vote." [At 154.]

New Jersey

A member of a city council could not vote to accept his own resignation in Steven ex rel. Kuberski v. Haussermann, 172 A. 738 (N.J. 1934), because:

Generally, public policy forbids the participation of a member of a municipal governing body in any matter before it which directly or immediately affects him individually. Considerations of public policy require the acceptance of a resignation to make it effective. This requirement is designed to safeguard the public interest, and it follows, as a necessary consequence, that the officer tendering his resignation cannot participate in the proceedings or action taken thereon. In the clash of interests--those of the public and the officer who seeks to resign his post--the action to be taken must be determined by a disinterested body. [At 741.]

Citing Haussermann and a number of other New Jersey cases, the New Jersey Supreme Court held that the mayor could not vote for himself to become a member of the city's water commission in Grimes v. Miller, 175 A. 152 (N.J. 1934), on the ground that the mayor was "disqualified from participation in his own election because of his self-interest." That was true, said the Court, even in the absence of a statutory prohibition on self-voting.

A member of a city council could not vote for himself to become a member of a joint sewer commission [of which several cities were a part] in Hazlet Township Committee v. Morales, 289 A.2d 563 (N.J. Law Div. 1972). Under New Jersey law the member of the city council was authorized to be appointed a member of the joint sewer commission; however, he could not vote to appoint himself to that position. The Court reasoned that a municipal official in such a situation was not likely to act purely out of undivided loyalty to the public.

But a New Jersey court created an exception in Skarbnik v. Spina, 308 A.2d 390 (N.J. Law Div. 1973). At a meeting of the city council in that case, Bonnet, voting for himself, was elected council president, and Spina, voting for himself, was elected the city council representative to the joint sewer authority. Without their self-votes, Bonnet and Spina would not have been elected to their respective offices. However, their votes were valid for three reasons, only one of which is pertinent to your city: In Hazlet the statute permitted rather than required the appointment to the sewer authority to be made from among the members of the city council. However, the statute governing election to the office of council president, and the statute governing the election to the joint sewer authority both required the election to those offices be made from the members of the city council. As indicated above, there is no statute even providing for the election of "commissioners" in your city, let alone requiring them to be made from the membership of the city council.

Finally, the Court reiterated the basic rule prohibiting self-votes on the part of members of governing bodies (and the exception to that rule), in Gayder v. Spiotta, 503 A.2d 348 (N.J. Super. A.D. 1985)

We are in full agreement with the trial judge's initial premise that a public official may not exercise his office to confer a personal benefit upon himself. Nor can there be any doubt as to the corollary principle that a member of a municipal governing body may not, therefore, vote to appoint himself to another office or position. [Citations omitted.] [At 351-52.]

Both of the Tennessee cases of Thompson and of Jackson, and all of the cases from other jurisdictions, are unanimous that the rule against local government governing bodies voting for themselves to fill offices was designed to prevent self-interest from governing appointments to fill those offices, and most of the cases speak of self-interest at least partly in pecuniary terms. However, it is also clear from those cases that a pecuniary interest is not the only self-interest that rule is designed to prevent; even if the offices involved in those cases had not been paid offices, the public policy would have operated to deny self-votes to fill them. With respect to Thompson, it is difficult to argue that it would have gone any other way even had not the office of city manager involved additional compensation.

Question 2

It seems clear to me that neither the city charter nor Thompson, contemplate that individual council members serve as "commissioners" of departments as they do under the commission form of government. [In Thompson, the City of Paris was chartered under the general law manager-commission charter. However, the title of that charter and of the members of the governing body are misnomers. The charter provides for a manager-council form of government, and for "commissioners" who are actually council members, rather than for a commission form of government in which the commissioners are true department heads.] As pointed out above, in Thompson the city commission (council) appointed one of its members to the position of city manager. With respect to the relationship of those offices, the Court said:

Of course, it was not the intention of Legislature to permit the City Manager to be one of the five members of the Board which determines whether or not he shall be discharged for cause, or without cause after twelve months, or, as a member of the Board, to accept or reject to modify his own recommendations made as City Manager, or, as a member of the Board, to direct and supervise himself as City Manager in the administration of the affairs of the City. This statement of the situation seems conclusive of the fact that the two offices are completely incompatible.

As heretofore stated, the statute (the Charter of Paris) expressly provided that "the board of commissioners shall appoint and fix the salary of the city manager." The Legislature, in enacting this statute, knew that each commissioner is a trustee charged with utmost fidelity to his cestui que trust, the City of Paris, and that each commissioner could not with due fidelity mingle his personal interests and affairs with his duties as such trustee, human nature being what it is. Therefore, when this statute provided that the commissioners should fix the salary of the City Manager it did by necessary implication forbid the board from appointing one of its own members to that office. No other effect can logically be given this provision of the statute. [At 61.]

Similarly, it was not the intention of the Legislature that members of the city council be department heads. Section 13 of the city charter also gives the marshal (police chief) certain duties, and provides that he "shall perform such other duties that may be imposed upon him by the Town Council." It takes a leap of imagination to translate that provision into a commission form of government where a council member runs the police (or any other)

department. As the city councilman appointed city manager could not maintain his fidelity to the office of city councilman in Thompson, so the city councilmen of your city appointed to head departments could not maintain fidelity to the office of councilman, for most of the same reasons.

The Thompson Court's holding that the positions of city commissioner (councilman) and city manager were incompatible offices was certainly broad enough to cover a variety of offices and even employments, both paid and unpaid. I think it is clear that both your city charter and Thompson would prohibit the board's self-appointment to head departments, and probably other offices and employments, both paid and unpaid, or even self-appointment over the actual administration of any departments.

Sincerely,

Sidney D. Hemsley
Senior Law Consultant

SDH/

Please remember that these legal opinions were written based on the facts of a given city at a certain time. The laws referenced in any opinion may have changed or may not be applicable to your city or circumstances.

Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this database.