



## INSPECTOR GENERAL REPORT

2005-02-0149

July 7, 2006

### WORKER'S COMPENSATION BOARD EMPLOYMENT

*Indiana Inspector General David O. Thomas and Staff Attorney Amanda Schaeffer report as follows:*

#### I.

This case involves members of the Indiana Worker's Compensation Board and whether they are statutorily required to devote their entire time to the discharge of their duties.

#### II.

The Office of Inspector General (OIG) received a complaint in 2005 alleging that members of the Indiana Worker's Compensation Board were not devoting their entire time to their official duties as required by IC 22-3-1-1(c). This statute stated in relevant part, "[E]ach member of the board shall devote his entire time to the discharge of the duties of his office and shall not hold any other position of trust or profit or engage in any occupation or business interfering with or inconsistent with the discharge of his duties as such member."

### III.

The Office of Inspector General (OIG) asserts jurisdiction in this case because under IC 4-2-7-2(b), the OIG is responsible for addressing fraud, waste, abuse, and wrongdoing in state agencies.

The Worker's Compensation Board is a state agency subject to OIG investigation as defined in IC 4-2-7-1(1).

### IV.

A preliminary investigation showed that Indiana Worker's Compensation Board members were engaging in employment outside their official duties.

For investigative purposes, however, a statutory ambiguity was immediately apparent in IC 22-3-1-1(c). Even though members were required to devote their "entire time" to their official duties, the second phrase of the same section infers the permission of outside employment that is not inconsistent with their official duties.

No Indiana authority interpreted this statutory language.

A review of legal authority in Ohio showed that a "position of trust or profit" was examined by the Ohio Attorney General in a similar inquiry. There, it was concluded that the prohibition referred only to a public position, rather than private employment. See: *1990 Ohio Op. Atty Gen. 55*; *1990 Ohio Op. Atty Gen. No. 14*; *1991 Ohio Op. Atty Gen. 1*.

Still, the Indiana language, "[E]ach member of the board shall devote his

entire time to the discharge of the duties of his office,” remained in IC 22-3-1-1(c).

One of the functions of the Indiana OIG is to recommend legislation. IC 4-2-7-3(9). Accordingly, the OIG recommended legislation to clarify the intent of this prohibition and deferred its investigation until the Indiana Legislature could review this matter. The Worker’s Compensation Board immediately sought legislative review through House Bill 1307.

Public Law 134-2006 was subsequently passed, amending IC 22-3-1-1(c) to read as follows: “No member of the board shall hold any other position of trust or profit or engage in any occupation or business interfering with or inconsistent with the discharge of the member’s duties.”

This amendment removed the language requiring board members to devote their “entire time” to their Worker’s Compensation duties.

Pursuant to the controlling resolution by the Indiana General Assembly, and there being no evidence that outside employment interferes with or is inconsistent with the duties of the Worker’s Compensation Board, this case was closed.

Dated this 7<sup>th</sup> day of July, 2006.



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David O. Thomas  
Indiana Inspector General