



INSPECTOR GENERAL REPORT

2010-04-0087, 2010-06-0162, 2010-09-0223, 2011-01-0001 et al.

September 17, 2012

SUMMARY OF 2011-2012 LEGISLATIVE RECOMMENDATIONS

Inspector General David O. Thomas reports as follows:

This report addresses the jurisdiction and activity of the Office of the Inspector General (OIG) with regard to its duty to make recommendations to the Indiana Legislature with regard to public integrity laws. IC 4-2-7-3(9).

A

2012 Legislative Session

Four areas of legislation were submitted for consideration by the OIG and addressed in the previous Legislative Session.

1

Nepotism

Old law: IC 4-15-7-1

New law: IC 4-2-6-16 (Public Law 105-2012)

Nepotism addresses the hiring of a person's relatives. An Inspector General Report¹ published in 2011 pointed out the ambiguities of the nepotism

¹ 2010-04-0087 published on-line at:
http://www.in.gov/ig/files/2010.04.0087.Nepotism_Rule.etal_WEB.pdf.

statute that had been in place, largely unchanged, since 1941. That uncertainty caused confusion for state employees and challenged the SEC's and OIG's advisory and investigation functions. Proposals were made and legislation resulted in the nepotism rule being clarified and re-codified with the other statutory ethics rules in Indiana Code 4-2-6. The resulting benefit is that nepotism restrictions in state government are clearer. The State Personnel Department assisted us in this project.

This is separate from the local unit nepotism legislation, -which also passed in the 2012 Session and over which the OIG has no jurisdiction. IC 4-7-1-1(1) and IC 4-2-6-2(1).

2

Recodification of Offenses in Titles 4 and 5
Old laws: All offenses within Titles 4 and 5 (IC 4 and 5)
New law: IC 35-41.1 (Public Laws 126-2012 and 114-2012)

The operating rules for state employees should be clear. They were not. In fact, many criminal acts were buried within Titles 4 and 5 of the Indiana Code and had never been charged by Indiana Prosecuting Attorneys. Several of these offenses were retained in lengthy statutes which often featured a conclusory statement that any violation of the preceding voluminous rule was a crime, making the state employee subject to arrest. Not only was this format unwieldy, but the Indiana Supreme Court in another context had declared this type of statutory structure unconstitutional.

2

An Inspector General report² was published pointing out these problems and suggesting a uniform code. The Indiana Legislative Council responded and the Criminal Code Evaluation Commission studied the matter over the summer in 2011. The Inspector General's Office was asked by the Commission to evaluate and codify all existing crimes and infractions within Titles 4 and 5 and to propose a reorganization of these offenses by topic. This was accomplished. Additionally, the existing offenses against public administration (formerly IC 35-44) were re-codified by topic. The resulting project passed with strong support out of the 2012 Legislative Session. *See 2011 Annual Report, at pages 5-6, published on-line at: <http://www.in.gov/ig/files/2AnnualReport.pdf>.*

3

Collection of fines and financial loss reporting
Old law: IC 4-2-7-6
New law: IC 4-2-7-6(e) (Public Law 136-2012)

The SEC issues fines if it determines a complaint filed by the Inspector General has been proven after a public hearing or through an agreed settlement. If the fine was not collected, the long-standing practice was to certify this finding to the Attorney General's Office for collection. An Inspector General Report³ was published proposing that the Inspector General legal staff be permitted to collect these fines without burdening the Attorney General's Office.

This legislation passed as well.

² 2008-06-0165 published on-line at: <http://www.in.gov/ig/files/2008.06.0165.UGCProposal.pdf>.

³ 2009-04-0068 published on-line at: http://www.in.gov/ig/files/2009.04.0068.SEC_Fines.pdf.

Reporting of financial loss audits
 Old law: IC 5-11-5-1
 New law: IC 5-11-5-1(a)(2) (Public Law 136-2012)

Additional legislation was proposed after another Inspector General Report⁴ suggested that the State Board of Accounts (SBOA) should file its audit reports revealing financial losses to the State with the OIG, a practice the SBOA currently and voluntarily already does. The legislation passed without objection.

B

Cummulative Legislative Recommendations

A review of previous legislative and administrative rule recommendations is illustrated below:

<i>description</i>	<i>citation</i>	<i>year</i>	<i>benefit</i>
Office of Inspector General enabling statute	IC 4-2-7 (P.L. 222-2005)	2005	Office of Inspector General statutorily established with jurisdiction & mission
State Ethics Commission enabling statute amendments	IC 4-2-6 (P.L. 222-2005)	2005	Expansion of State Ethics Commission jurisdiction, Code of Ethics, and placement of Commission within IG framework
State False Claims established	IC 5-11-5.5 (P.L. 222-2005)	2005	Inspector General's involvement in new state false claims procedures established with whistleblower protections
Executive Branch Lobbying oversight created	IC 4-2-8 (P.L. 222-2005)	2005	Indiana's first-ever Executive Branch lobbying restrictions, including registration and disclosure requirements

⁴ 2009-02-0018 published on-line at:
http://www.in.gov/ig/files/2009.02.0018.SBOA_Reporting.pdf.

Indiana Code of Ethics established	42 IAC 1 (IC 4-2-7-3(6))	2005	Indiana's first consolidated Code of Ethics
Ethics Commission and Inspector General duties clarified	IC 4-2-6 & 8 (P.L. 89-2006)	2006	Executive Lobbying, definitions, application & expanded penalties clarified
Victims' Compensation Fund	IC 5-2-6.1 (P.L. 121-2006)	2006	Victim reimbursement rate changed to better control cost escalation
Worker's Compensation Board	IC 22-3-1-1 (P.L. 134-2006)	2006	Outside employment provisions pertaining to Board members clarified
Indiana State Museum:	Budget Bill (P.L. 234-2007)	2007	Appropriation decreased by \$1.8M and restructured to address accountability and internal controls
Indiana State Library	Budget Bill (P.L. 234-2007)	2007	Elimination of \$2.2M appropriation to INCOLSA & assumption of duties to State Library
Uniform Government Code published	http://www.in.gov/ig/2332.htm	2008	On-line resource for State operating rules
State Museum Foundation relation to DNR	IC 14-20 (P.L. 66-2008)	2008	Authorization of State Museum Foundation to work with DNR in operating Museum
Department of Corrections Foundation	IC 11-8-2-14 (P.L. 77-2009)	2009	Advise given to DOC on statutorily creating foundation to assist employee family members in crisis
Ethics Omnibus	IC 4-2-6-15 (P.L. 58-2010)	2010	Prohibitions against using state funds for certain types of communications issued by State Officers
Indiana Historical Society	http://www.in.gov/ig/2642.htm	2010	Recommendation that amending legislation is required to remove quasi-agency status, and inaction would be interpreted as endorsement of current status
Lottery promulgation	65 IAC 2-1-14	2011	Internal gift rule less restrictive than Code of Ethics repealed
Indiana Public Retirement System disclosures	IC 4-2-6-8 (P.L. 23-2011)	2011	Addition of elements that must be reported by members of INPRS board on Financial Disclosure Statement under IC 4-2-6
Contingency Fee Counsel review	IC 4-6-3-2.5 (P.L. 101-2011)	2011	Creates a requirement of Inspector General review of all contingency fee counsel agreements from state agencies
Official Misconduct criminal offense	IC 35-44-1-2 (P.L. 102-2011)	2011	Clarifies offense by updating definitions and adopting State Supreme Court interpretations from <i>State v. Dugan</i> , 793 N.E.2d 1034, 1039 (Ind. 2003)

Depository Rule criminal offense	IC 5-13-6-1 (P.L. 107-2011)	2011	Repealed duplicative depository provisions and adjusted class of offense for more practical charging
Conflict of Interest criminal offense	IC 35-44-1-3 (P.L. 110-2011)	2011	Clarified and reorganized offense with streamlined definitions
Department of Toxicology	IC 10-20-2 (P.L. 158-2011)	2011	Reviewed operations for violations and removal from supervision by Indiana University to stand-alone Executive Branch agency
Ethics opt-out elimination	Multiple statutes (P.L. 177-2011)	2011	Eliminated multiple statutory provisions allowing executive branch agencies to opt-out of Ethics Commission jurisdiction
State Museum and Historic Sites Corporation	IC 4-37-5-6 (P.L. 167-2011)	2011	Maintained jurisdiction of Ethics Commission for employees of new quasi agency and establishment of foundation
Nepotism revisions	IC 4-2-6 (P.L. 105-2012)	2012	Refined and relocated state government nepotism provisions to Code of Ethics in IC 4-2-6
Inspector General collection of Ethics Commission fines	IC 5-11 et al. (P.L. 136-2012)	2012	Authority given to Inspector General to collect Ethics Commission fines
SBOA financial loss audits reported to Inspector General	IC 5-11 et al. (P.L. 136-2012)	2012	Ratifying SBOA's current voluntary process, audit reports with financial losses required to be reported to Inspector General
Public Administration offenses recodified	IC 35-44.1 (P.L. 114-2012)	2012	Current public administration offenses recategorized by topic
IC 4 and IC 5 offense recodification	IC 35-44.2 (P.L. 126-2012)	2012	IC 4 and 5 offenses recodified to better organize and eliminate duplications
Indiana Horse Racing Commission adjudication	71 IAC 10	2012	Procedures for HRC adjudication modified

Recommendations for the upcoming Legislative Session are made and filed separately from this report.

Dated this 17th day of September, 2012.

/s/ David O. Thomas, Inspector General