

STATE OF INDIANA) IN THE HOWARD _____ COURT
) SS:
COUNTY OF HOWARD)

STATE OF INDIANA *ex rel.*)
GREGORY F.ZOELLER,)
ATTORNEY GENERAL OF INDIANA,)
)
 Plaintiff,)
)
 v.)
)
JOHN HARBAUGH, JR.,)
)
 Defendant.)

CAUSE NO. _____

COMPLAINT TO RECOVER PUBLIC FUNDS

The Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana (the “State”), by Luke P. Hodgin, Deputy Attorney General, for its Complaint to Recover Public Funds due and owing, states as follows:

FACTS

1. The State Board of Accounts (“SBOA”), pursuant to Ind. Code § 5-11-1-9, performed an examination of the books, accounts, and records of Harrison Township (the “Township”). The results of the examination are set forth in SBOA Audit Report B38890 dated July 15, 2011. Said Audit Report is attached hereto and incorporated herein as Exhibit A.
2. The Defendant, John Harbaugh, Jr. (“Harbaugh”), was the Trustee of Harrison Township for the duration of the audit period.
3. The Audit Report disclosed malfeasance, misfeasance, or nonfeasance on the part of Harbaugh, and was placed by the State Examiner with Attorney General Gregory F. Zoeller pursuant to Ind. Code § 5-11-5-1(a).

4. The Audit Report also disclosed public money that had been unlawfully expended, obtained by fraud or any unlawful manner, or wrongfully withheld from the public treasury pursuant to Ind. Code § 5-11-6-3.

5. The public funds that the State seeks to recover upon this Complaint were found by the SBOA to be either:

- a. misappropriated, diverted, or unaccounted;
- b. illegally received;
- c. illegally retained;
- d. unaccountable for or not paid over any money so received;
- e. obtained by fraud or in any unlawful manner; and/or
- f. wrongfully withheld from the public treasury.

6. The Defendant is a delinquent officer against whom recovery of such misappropriated, diverted, or unaccounted for funds may be had.

7. This Complaint is brought for the benefit of Harrison Township.

8. This Complaint is brought by Attorney General Gregory F. Zoeller in the name of the State of Indiana pursuant to Ind. Code § 5-11-7-1.

COUNT I

The Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana, by and through its undersigned counsel, complains of the Defendant, John Harbaugh, Jr., and says:

9. During the audit period, Harbaugh had a duty to account for all funds of Harrison Township and/or to commit no acts of misfeasance, malfeasance, or nonfeasance.

10. During the audit period, Harbaugh wrongfully or negligently incurred penalties, interest, and other charges to the Internal Revenue Service and Indiana Department of Revenue,

or otherwise committed several acts of misfeasance, malfeasance, and nonfeasance which resulted in the misappropriation, diversion, and misapplication of public funds.

11. During the audit period, Harbaugh also made payments to the Internal Revenue Service and Indiana Department of Revenue for which there is no supporting documentation and, therefore, cannot be verified by the State Board of Accounts.

12. The nature of the breach by Harbaugh was so egregious as to constitute gross negligence or an intentional disregard of his duties.

13. The total amount of loss to the Township for unsupported and unverified payments, penalties, interest, and other charges paid to the Internal Revenue Service and the Indiana Department of Revenue is Sixteen Thousand Three Hundred Seventy One and 67/100 Dollars (\$16,371.67).

14. As a direct and proximate result the breach of Harbaugh's duty to the Township, the Township suffered a pecuniary loss in the amount of \$16,371.67.

15. Harbaugh is liable to the State of Indiana and Harrison Township in the amount of \$16,371.67.

WHEREFORE, the Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana, respectfully requests the Court to (1) enter judgment for the State and against the Defendant, John Harbaugh, Jr., in the amount of \$16,372.67, plus costs, attorney fees, and prejudgment interest, and (2) grant the State all other just and proper relief.

COUNT II

The Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana, by and through its undersigned counsel, complains of the Defendant, John Harbaugh, Jr., and says:

16. The State restates and pleads each and every allegation contained in the previous paragraphs inclusive of Count I, and those paragraphs are incorporated in Count II as if wholly set forth herein.

17. Indiana Code § 34-24-3-1 provides that if a party suffers a pecuniary loss as a result of a violation of Ind. Code Art. 35-43, he may bring a civil action against the person(s) who caused the loss for:

- (1) An amount not to exceed three times the actual damages of the person suffering the loss;
- (2) The costs of the action;
- (3) A reasonable attorney's fee;
- (4) Actual travel expenses that are not otherwise reimbursed under subdivisions (1) through (3) and are incurred by the person suffering loss to:
 - (A) have the person suffering loss or an employee or agent of that person file papers and attend court proceedings related to the recovery of a judgment under this chapter; or
 - (B) provide witnesses to testify in court proceedings related to the recovery of a judgment under this chapter;
- (5) A reasonable amount to compensate the person suffering loss for time used to:
 - (A) file papers and attend court proceedings related to the recovery of a judgment under this chapter; or
 - (B) travel to and from activities described in clause (A);
- (6) Actual direct and indirect expenses incurred by the person suffering loss to compensate employees and agents for time used to:
 - (A) file papers and attend court proceedings related to the recovery of a judgment under this chapter; or
 - (B) travel to and from activities described in clause (A); and
- (7) All other reasonable costs of collection.

18. The State is a party suffering a pecuniary loss as a result of a violation by Defendant Harbaugh of one or more of the following: Ind. Code § 35-43-4-2, Ind. Code § 35-43-4-3, and/or Ind. Code § 35-43-5-3, as described in SBOA Audit Report B38890.

19. The State is a party suffering a pecuniary loss as a result of a breach by the Defendant Harbaugh, of the Defendant's contract and trust, both real and constructive, which the State imposed on the Defendant by law to properly account for public funds of the Township.

20. The State is entitled to the relief described in Ind. Code § 34-24-3-1, including three times the actual loss, which is Forty Nine Thousand One Hundred Fifteen and 1/100 Dollars (\$49,115.01), plus costs, attorney fees, and prejudgment interest.

WHEREFORE, the Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana, respectfully requests the Court to (1) enter judgment for the State and against the Defendant, John Harbaugh, Jr., (2) grant the State the relief described in Ind. Code § 34-24-3-1, plus attorney fees, costs, and prejudgment interest, and (3) grant the State all other just and proper relief.

Respectfully submitted,

GREGORY F. ZOELLER
Attorney General of Indiana
Attorney No. 1958-98

By: _____
Luke P. Hodgin
Deputy Attorney General
Attorney No. 27162-49

Office of the Indiana Attorney General
302 West Washington Street
Indiana Government Center South, 5th Floor
Indianapolis, IN 46204-2770
Telephone: (317) 232-6356

APPEARANCE FORM (CIVIL)
Initiating Party

Cause Number: _____

1. Name of Initiating Party

STATE OF INDIANA *ex rel.* GREGORY F. ZOELLER, ATTORNEY GENERAL OF INDIANA

2. Telephone number of *pro se* initiating party: N/A

3. Attorney Information (as applicable for service process):

Name: Luke P. Hodgin
Attorney No.: 27162-49

Address: Office of the Indiana Attorney General
302 West Washington Street
Indiana Government Center South, 5th Floor
Indianapolis, IN 46204

Phone: (317) 232-6356
FAX: (317) 232-7979
E-Mail: luke.hodgin@atg.in.gov

4. Case Type Requested: CC

5. Will accept FAX Service: Yes ___ No XX

6. Social Security numbers of family members in cases involving support issues: N/A

7. Are there related cases: Yes ___ No XX If yes, list case and number below:

Caption: _____ Case Number: _____
Caption: _____ Case Number: _____

8. Additional Information required by State or local rule: N/A

SUMMONS

STATE OF INDIANA) IN THE HOWARD _____ COURT
) SS:
COUNTY OF HOWARD) CAUSE NO. _____

STATE OF INDIANA *ex rel.*)
GREGORY F.ZOELLER,)
ATTORNEY GENERAL OF INDIANA,)
)
Plaintiff,)
)
v.)
)
JOHN HARBAUGH, JR.,)
)
Defendant.)

TO DEFENDANT: John Harbaugh, Jr.
932 Windy Hill Court
Russiaville, IN 46979

You are hereby notified that you have been sued by the person named as the Plaintiff and in the Court indicated above. The Court's Address and Phone are: Howard County Circuit & Superior Courts Clerk, 104 Buckeye Street #114, Kokomo, IN 46901; Telephone: (765) 456-2204.

The nature of the suit against you is stated in the complaint which is attached to this document. It also states the relief sought or the demand made against you by the Plaintiff. You must answer the complaint in writing, by you or your attorney, within twenty (20) days, commencing the day after you receive this summons (you have twenty-three (23) days to answer if this summons was received by mail), or a judgment by default may be rendered against you for the relief Plaintiff has demanded. If you have a claim for relief against the Plaintiff arising from the same transaction or occurrence, you must assert it in your written answer.

(The following manner of service of summons is hereby designated.)

X **Personal Service by Office of the Indiana Attorney General**

Date: _____

Clerk of the Court, Howard County (Seal)

Luke P. Hodgin, Deputy Attorney General
Office of the Indiana Attorney General
302 West Washington Street
Indiana Government Center South, 5th Floor
Indianapolis, IN 46204
Telephone: (317) 232-6356

CCS ENTRY FORM
HOWARD CIRCUIT/SUPERIOR COURT

File Stamped Here

CASE NUMBER: _____

CAPTION: *State of Indiana ex rel. Gregory F. Zoeller, Attorney General of Indiana v. John Harbaugh, Jr.*

The activity of the Court should be summarized as follows on the Chronological Case Summary (CCS): The Plaintiff files its: *Summons and Complaint*

Luke P. Hodgin
Attorney No. 27162-49

Name and I.D. Number of Submitting Attorney

Office of the Indiana Attorney General
302 West Washington Street
Indiana Government Center South, 5th Floor
Indianapolis, IN 46204
(317) 232-6356

Address and Telephone Number

State of Indiana
Party Represented

Name, Address and Telephone Number of Opposing Counsel

(Or, when appropriate: "Mailing list attached")

(TO BE DESIGNATED BY THE COURT)

This CCS Entry Form shall be:

- () Placed in case file
- () Discarded after entry on the CCS
- () Mailed to all counsel by: ____ Counsel ____ Clerk ____ Court
- () There is no attached order: or
The attached order shall be placed in the RJO: Yes () No ()

DATE: _____

APPROVED: _____
Judge, Howard Circuit/Superior Court