

Caselaw Survey

Auditors' Powers & Duties

State Board of Accounts

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Only your local attorney can provide formal legal advice to your unit.

I have no independent knowledge of any of the specific facts or circumstances that led to any of these decisions.

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BOARD MEETING MINUTES

Date and Time: _____

Topic: _____

MINUTES TAKEN BY: _____

ATTENDANCE AT MEETING

AGENDA

NOTES

State ex rel. Van Der Veer v. Butcher

State ex rel. Van Der Veer v. Butcher, 185 N.E. 908 (Ind. 1933)

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FACTS

State ex rel. Van Der Veer v. Butcher, 185 N.E. 908 (Ind. 1933)

- In September 1925, the Howard County Council held a regular session. After the session, the Auditor prepared minutes for the Council's approval. The minutes were approved and entered into the record.
- The minutes indicated "that the appropriation ordinance adopted for the calendar year 1926 was not prepared prior to said regular session and was read only on one day . . . and not on two separate days, as required."

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FACTS

State ex rel. Van Der Veer v. Butcher, 185 N.E. 908 (Ind. 1933)

- For reasons that are not in the record, the plaintiff, Mr. Van Der Veer, sought a court order compelling the Auditor to modify the minutes.
- He specifically wanted to change the statement regarding the dates on which the appropriation ordinance was read.

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LEGAL QUESTION

State ex rel. Van Der Veer v. Butcher, 185 N.E. 908 (Ind. 1933)

- LEGAL QUESTION: If an individual is seeking a court order to alter county council minutes, is it appropriate to name the county auditor as the defendant in a lawsuit?
- ACTUAL QUESTION: Ultimately, who has authority to adopt council minutes – the auditor or the council?

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HOLDING

State ex rel. Van Der Veer v. Butcher, 185 N.E. 908 (Ind. 1933)

- “The auditor, as ex officio clerk of the council, is merely the amanuensis of the county council.”
- “There certainly must be some stage in the preparation of the minutes . . . after which the ex officio clerk cannot change the record for the purpose of making it conform to what he thinks it should be. This would be true whether the change in question would have the result of making the record speak the truth or an untruth.”

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TAKEAWAY

State ex rel. Van Der Veer v. Butcher, 185 N.E. 908 (Ind. 1933)

Outcome: The plaintiff must sue the Council to obtain an order changing the Council’s minutes.

The council and commissioners own their minutes. While statute makes the auditor the clerk of both bodies, it does not transfer ownership of their minutes to the auditor.

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AVGQ	Assessed Value Growth Quotient
CEDIT	County Economic Development Income Tax
CAGIT	County Adjusted Gross Income Tax
COIT	County Option Income Tax
PTRC	Property Tax Replacement Credit

Coonrod v. Marsh

Coonrod v. Marsh, 830 N.E.2d 91 (Ind. Ct. App. 2005)

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FACTS

Coonrod v. Marsh, 830 N.E.2d 91 (Ind. Ct. App. 2005)

- June 2000 – Hendricks County Auditor signs a contract with Coonrod and his accounting firm
- Neither the county commissioners nor any other county official approves the contract
- Contingent fee contract, where Coonrod is entitled to 33.3% of any assets his firm recovers for the County
- Coonrod alleges that he identified \$8,269,493 in CAGIT funds to which Hendricks County was entitled
- Coonrod sued to recover his contingent fee - \$2.7 million

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LEGAL QUESTION

Coonrod v. Marsh, 830 N.E.2d 91 (Ind. Ct. App. 2005)

Is the contract with Coonrod an enforceable contractual agreement?

“In this case, we are confronted with the issue of whether a County Auditor has the authority to contract with an individual for the identification and collection of various county assets and funds in exchange for payment to that individual for such services, absent permission to do so from the appropriate governing body.”

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HOLDING

Coonrod v. Marsh, 830 N.E.2d 91 (Ind. Ct. App. 2005)

The Auditor lacked authority to enter into the contract with Coonrod, and therefore the contract was unenforceable.

“[T]here is nothing indicating that the auditor—absent approval from the county—has the authority to enter into a contract to pay a fee to a third party for the recovery of assets such as CAGIT funds.”

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TAKEAWAYS

Coonrod v. Marsh, 830 N.E.2d 91 (Ind. Ct. App. 2005)

- Outcome: Coonrod's case is dismissed and he is not entitled to any compensation.
- Auditors do not have independent authority to contractually bind a county.
- Follow the process for contracting! IC 36-2-2.8 and 2.9

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State ex rel. Steers v. Acree

State ex rel. Steers v. Acree, 217 N.E.2d 167 (Ind. Ct. App. 1966)

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FACTS

State ex rel. Steers v. Acree, 217 N.E.2d 167 (Ind. Ct. App. 1966)

- In 1958 and 1959, Vigo County purchased \$65,662 in asphalt.
- In 2025, this would equal approximately \$725,000 of asphalt.
- The purchase was competitively bid and properly awarded.
- However, the County neglected to prepare or execute a contract for the purchase.
- Asphalt was provided, claims for payment were submitted and appropriately certified, and the auditor sent payments to the asphalt company.

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FACTS

State ex rel. Steers v. Acree, 217 N.E.2d 167 (Ind. Ct. App. 1966)

- The State sued the Auditor to recover the full \$65,662
- The State argued that the Auditor was required “to withhold claims where there were no legal contracts in evidence . . . [T]he county auditor is required to keep a record of all contracts between the county and third parties in order to check the validity of claims presented.”
- The Auditor responded that all issued payments were made “in good faith, pursuant to order or authority of the Board of Commissioners.”

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LEGAL QUESTIONS

State ex rel. Steers v. Acree, 217 N.E.2d 167 (Ind. Ct. App. 1966)

- In determining whether a claim is correct and payable, may an auditor rely on the statements of third parties such as department heads, the county attorney, and the county commissioners?
- Can the auditor be held personally liable for claims paid when no contract supports the payment?

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HOLDINGS

State ex rel. Steers v. Acree, 217 N.E.2d 167 (Ind. Ct. App. 1966)

- In determining whether a claim is correct and payable, may an auditor rely on the statements of third parties such as department heads, the county attorney, and the county commissioners?
 - Yes!
- “[T]he auditor acted within the scope of his authority . . . relying upon certified statements of the highway supervisor, and departmental heads, guided by advice of the county attorney, and following the determination of the Board of Commissioners.”

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HOLDINGS

State ex rel. Steers v. Acree, 217 N.E.2d 167 (Ind. Ct. App. 1966)

- Can the auditor be held personally liable for claims paid when no contract supports the payment?
 - Not under the facts in this case. More than just a missing contract is required for personal liability.
- “The auditor acted in a manner devoid of dishonesty, devoid of secrecy, devoid of deceit, devoid of pecuniary gain, devoid of fraud, and the municipality obtained value received for money spent, and hence [the auditor] should not be held liable.”

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TAKEAWAYS

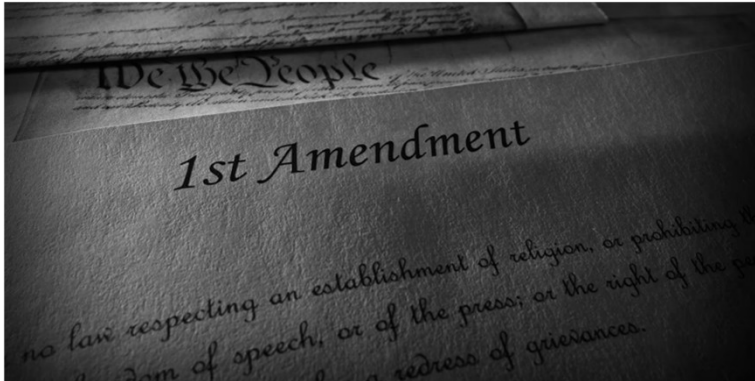
State ex rel. Steers v. Acree, 217 N.E.2d 167 (Ind. Ct. App. 1966)

Outcome: The auditor is not liable.

When paying claims, an auditor may rely on the assertions of other county officials.

While a missing contract is going to present a compliance issue, by itself, a missing contract does not lead to a chargeable action.

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Kline v. Hughes

Kline v. Hughes, 131 F.3d 708 (7th Cir. 1997)

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FACTS

Kline v. Hughes, 131 F.3d 708 (7th Cir. 1997)

- In 1995, Doris Hughes, a Republican, is elected as the new Auditor in Spencer County, taking office on January 1, 1996
- On December 15, 1995, Ms. Hughes notified one of the five deputy auditors, Ms. Kline, that she would not be retained
- The outgoing auditor, a Democrat, had not formally designated a “first” deputy auditor, but Ms. Kline had filled in for the outgoing auditor at board meetings
- The incoming Auditor, Ms. Hughes, stated that she needed to appoint a first deputy auditor whom she could trust

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LEGAL QUESTION

Kline v. Hughes, 131 F.3d 708 (7th Cir. 1997)

- Did incoming Auditor Hughes lawfully terminate and replace Ms. Kline, or did the termination violate Kline's first amendment rights?

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HOLDING

Kline v. Hughes, 131 F.3d 708 (7th Cir. 1997)

- County auditors are free to select their own chief deputy auditor, and party affiliation is a permissible basis for said selection
- "[T]he office of deputy auditor plays a vital role in the implementation of the county auditor's policies. The power in that office is underlined by the legislature's specific authorization that the elected county auditor has the authority to appoint a first or chief deputy of her choice."
- "[A] deputy county auditor is more than a clerk or an employee; he is vested with the power by express statute to perform all duties of the auditor, and public policy requires that this should be so."

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TAKEAWAYS

Kline v. Hughes, 131 F.3d 708 (7th Cir. 1997)

- County auditors have broad authority to select whomever they prefer as chief deputy auditor.
- A chief deputy auditor is empowered to take any action the auditor may lawfully take.
- Select your chief deputy thoughtfully.
- NOTE: This is the exception. Generally, political affiliation is not a permissible basis for a hiring or firing decision.

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Roberts v. State ex rel. Jackson County Board of Commissioners

Roberts v. State ex rel. Jackson County Bd. of Comm'rs, 278 N.E.2d 285 (Ind. Ct. App. 1972)

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FACTS

Roberts v. State ex rel. Jackson County Bd. of Comm'rs, 278 N.E.2d 285 (1972)

- On March 3, 1971, the elected Jackson County Surveyor dies
- The county commissioners “requested” the deputy surveyor, Howard Cummings, assume the office until they could get a successor appointed
- Mr. Cummings kept the Surveyor’s Office open through March and April 1971, supervised the Office, and then submitted a claim for payment of his wages covering March and April. In so doing, Mr. Cummings certified his own salary claim.

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FACTS

Roberts v. State ex rel. Jackson County Bd. of Comm'rs, 278 N.E.2d 285 (1972)

- Mr. Roberts, the County Auditor, withheld payment of the claim to Mr. Cummings. The Auditor did not believe he had lawful authority to issue the payment on two grounds:
 - (1) The auditor believed that upon the surveyor’s death, there was, by law, a vacancy in the office and that the deputy surveyor was effectively terminated; and
 - (2) The auditor believed that he could not lawfully pay the claim because the claim to pay the deputy surveyor was not certified by a department head as required by law.

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LEGAL QUESTIONS

Roberts v. State ex rel. Jackson County Bd. of Comm'rs, 278 N.E.2d 285 (1972)

- Under the circumstances, could the Auditor lawfully approve a self-certified claim and thus pay Mr. Cumming's wages?
- Upon the death of the elected county surveyor, was the deputy surveyor's employment considered terminated?

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HOLDINGS

Roberts v. State ex rel. Jackson County Bd. of Comm'rs, 278 N.E.2d 285 (1972)

- Could the Auditor lawfully approve a self-certified claim and thus pay Mr. Cumming's wages?
 - ANSWER: Yes!
- "[The Auditor] contends that Mr. Cummings could not sign his own claim . . . [Mr. Cummings] was appointed . . . to maintain the office and keep it open as directed by the County Commissioners . . . Under this authority, . . . he had the right to sign his own voucher for his salary . . . then the County Commissioners could allow the claim for him as they had employed him and then direct and order the Auditor to pay the claim in full."

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HOLDINGS

Roberts v. State ex rel. Jackson County Bd. of Comm'rs, 278 N.E.2d 285 (1972)

- Was the deputy surveyor's employment considered terminated upon the death of the elected surveyor?
- ANSWER: No.
- “[C]onsidering the statutes, the Constitution, and the authority vested in the Commissioners and the further fact that Mr. Cummings . . . was there at the request of the County Commissioners, we have determined that he was legally employed and rightly operating the office. He was an employee of Jackson County and as such employee he was entitled to be paid a fair wage or salary for the work he did.”

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HOLDINGS

Roberts v. State ex rel. Jackson County Bd. of Comm'rs, 278 N.E.2d 285 (1972)

- The Court is frustrated that the General Assembly had not codified a solution to unexpected vacancies.
- “[W]e must state that the problem of filling the vacancy of the County Surveyor's office and the handling of the business in the interim of the vacancy is a problem which is necessarily to be borne by and taken care of by . . . the General Assembly. This is a legislative matter and this court abhors the courts' legislating.”

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TAKEAWAYS

Roberts v. State ex rel. Jackson County Bd. of Comm'rs, 278 N.E.2d 285 (1972))

Courts are extremely concerned with the necessity of keeping public offices open and functioning.

"[If] the Recorder of a county in Indiana might die and if there was no one to keep the office open the following day or days in which it was closed, one of the days the office was closed might be the last day on which a lien could be filed."

"The Clerk's office might be closed because of the death of the Clerk, if we followed the thinking and contention of defendant-appellant and the office was closed immediately after the death of the Clerk for a number of days, it might be that the last day to get a law suit on file would expire during that time and the statute of limitations would run and the aggrieved party would lose his day in court."

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LEGISLATIVE RESPONSE

Roberts v. State ex rel. Jackson County Bd. of Comm'rs, 278 N.E.2d 285 (1972)

- CURRENT LAW
 - IC 3-13-11-12: "[T]he chief deputy employee of the office that is vacant assumes the duties of that office for the period of time between when a vacancy occurs and when the office is filled."
 - IC 3-13-11-13: "[I]f a chief deputy employee does not exist in a circuit or county office, or the chief deputy employee declines or is ineligible to serve, the board of county commissioners shall appoint, as soon as is reasonably possible, a person to assume the duties of the office until the office is filled."

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Allen County Council v. Allen Circuit Court

Allen Cnty. Council v. Allen Cir. Ct., 549 N.E.2d 364 (Ind. 1990)

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FACTS

Allen County Council v. Allen Circuit Court, 549 N.E.2d 364, (Ind. 1990)

- In September 1989, a judge in Allen County issued an order mandating increases in pay for certain court staff.
- The Allen County Council did not appropriate funds for the payment of salaries at the amounts mandated in the court order.
- The Court ordered that if the County Council failed to set “the salaries as ordered, . . . the Allen County Auditor, should pay from unappropriated funds such sums as may be necessary to fulfill the intent of the mandate.”

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FACTS

Allen County Council v. Allen Circuit Court, 549 N.E.2d 364, (Ind. 1990)

POSITION	CURRENT SALARY	MANDATED SALARY
Chief Public Defender	\$22,208	\$30,000
Assistant Public Defender	\$14,976	\$22,178
Public Defender Secretary	-	\$12,818
Probation Officer	-	\$19,890

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FACTS

Allen County Council v. Allen Circuit Court, 549 N.E.2d 364, (Ind. 1990)

- “The appellant councilmen have the unenviable responsibility of distributing available funds among the various branches of county government.”
- “The trial judge has the responsibility of supervising the functioning of the circuit court. It is essential to that function that competent personnel be employed. In order to effectuate such employment, salaries must be comparable to salaries paid to persons of corresponding ability in that community.”

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FACTS

Allen County Council v. Allen Circuit Court, 549 N.E.2d 364, (Ind. 1990)

- The Council initiated suit against the Circuit Court
 - The Council argued that the Auditor could not legally pay claims without a Council appropriation, even where there was a court order.
 - The Council further argued the Circuit Court could not order payments without the Council appropriating funds.

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LEGAL QUESTIONS

Allen County Council v. Allen Circuit Court, 549 N.E.2d 364, (Ind. 1990)

- Can the Circuit Court mandate that the County Council appropriate particular sums for the salaries of certain court personnel?
- If the Council refuses to appropriate money in accordance with the Court's order, can the Auditor pay salaries without an appropriation?

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HOLDINGS

Allen County Council v. Allen Circuit Court, 549 N.E.2d 364, (Ind. 1990)

Can the Circuit Court mandate that the County Council appropriate particular sums for the salaries of certain court personnel?

Yes, definitely.

“The power of the courts to mandate funds for their operation has been clearly established for many years . . . the county council has no choice other than to comply with the mandate. Their action in so doing is ministerial . . . if the council does not comply with the mandate they are subject to judicial sanction.”

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HOLDINGS

Allen County Council v. Allen Circuit Court, 549 N.E.2d 364, (Ind. 1990)

If the Council refuses to appropriate money in accordance with the Court’s order, can the Auditor pay salaries without an appropriation?

Yes, definitely.

“[T]he County Auditor serves only as a clerk of the county council in paying out county funds . . . The auditor's action in response to the court's order is not contrary to statute but rather is a performance of her duty to dispense county funds.”

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TAKEAWAYS

Allen County Council v. Allen Circuit Court, 549 N.E.2d 364, (Ind. 1990))

- Courts have broad power to set the salaries of staff under their jurisdiction.
- Comply with court orders.
- Avoid internal disputes if you can.

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Thank You



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Compliance

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