

STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2769

SPECIAL INVESTIGATION REPORT
OF

1925 POLICE PENSION FUND
CITY OF MICHIGAN CITY
LAPORTE COUNTY, INDIANA

June 1, 2015 to December 31, 2019



FILED
07/27/2020

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STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

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TO: THE OFFICIALS OF THE CITY OF MICHIGAN CITY, LAPORTE COUNTY, INDIANA

This is a special investigation report for the 1925 Police Pension Plan, City of Michigan City (City), for the period June 1, 2015 to December 31, 2019, and is in addition to any other report for the City as required under Indiana Code 5-11-1. All reports pertaining to the City may be found at www.in.gov/sboa/.

We performed procedures to determine compliance with applicable Indiana laws and uniform compliance guidelines established by the Indiana State Board of Accounts and were limited to records associated with the 1925 Police Pension Fund, including check histories, bank statements, and earning histories. The Results and Comments contained herein describe the identified reportable instances of noncompliance found as a result of these procedures. Our tests were not designed to identify all instances of noncompliance; therefore, noncompliance may exist that is unidentified.

Any Official Response to the Results and Comments, incorporated within this report, was not verified for accuracy.

Paul D. Joyce
Paul D. Joyce, CPA
State Examiner

April 28, 2020

1925 POLICE PENSION FUND
CITY OF MICHIGAN CITY
RESULTS AND COMMENTS

BACKGROUND

Russell Yorkey was a member of the 1925 Police Pension Plan. Russell Yorkey drew a pension from the 1925 Police Pension Plan from the date he retired until his death on October 21, 1998. Following his death, his widow, Henrietta Yorkey (Yorkey), began receiving the spousal pension benefits. On April 16, 2013, Pamela Westphal (Westphal), Yorkey's daughter, was granted guardianship over her mother's estate. Yorkey passed away on June 21, 2015, at which time her benefits should have stopped. Westphal never reported the passing of Yorkey to the City. Monthly pension checks continued to be directly deposited into Yorkey's account from July 2015 to December 2019.

The City notified the Indiana State Board of Accounts of the pension issue on January 7, 2020. The Indiana State Board of Accounts examined the records, and the results of our investigation are described in the following comments.

POLICE PENSION OVERPAYMENTS

Monthly pension benefits continued being directly deposited into Yorkey's bank account after the date of her death. The City annually issued Federal Forms 1099-R Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., for Yorkey's benefits to Westphal's address.

The following table summarizes the pension benefits received after Yorkey's death:

<u>Years</u>	<u>Gross Earnings</u>
2015	\$ 8,286.07
2016	14,914.92
2017	16,257.24
2018	16,501.08
2019	<u>19,440.00</u>
Total	<u>\$ 75,399.31</u>

An analysis was performed of the disbursements and withdrawals from Yorkey's bank account after Yorkey's death and pension benefits should have ceased.

Funds totaling \$65,325 were transferred from Yorkey's bank account to Westphal's bank account. Westphal was the primary owner of the account and the only listed signatory of this account.

In addition, there was \$4,779.76 in purchases out of Yorkey's account to utility companies, an insurance company, retail vendors, and monthly withdrawals to a fitness facility.

Indiana Code 36-8-6-9.6 states in part:

". . .(b) A payment shall be made to the surviving spouse of a deceased member in an amount fixed by ordinance, but at least an amount equal to the following: . . .

1925 POLICE PENSION FUND
CITY OF MICHIGAN CITY
RESULTS AND COMMENTS
(Continued)

- (2) Except as otherwise provided in this subdivision, to the surviving spouse of a member who dies after December 31, 1988, an amount per month, during the spouse's life, . . ."

Indiana Code 5-11-6-3 states:

"If any examination or investigation made by the state examiner personally or through a deputy examiner, field examiner, or private examiner under this chapter or under any other statute discloses:

- (1) malfeasance, misfeasance, or nonfeasance in office or of any officer or employee;
- (2) that any public money has been:
 - (A) unlawfully expended, either by having been expended for a purpose not authorized by law in an amount exceeding that authorized by law, or by having been paid to a person not lawfully entitled to receive it; or
 - (B) obtained by fraud or in any unlawful manner; or
- (3) that any money has been wrongfully withheld from the public treasury;

a duly verified copy of the report shall be submitted by the state examiner to the attorney general, who shall institute and prosecute civil proceedings as provided in section 1 of this chapter, and to the inspector general."

Indiana Code 5-11-7-1 states:

"When, under the provisions of this article, any report or reports are certified to the attorney general by the state examiner of the state board of accounts charging any public official, any former public official, and/or any other person named in such report with having illegally received, and/or having illegally retained, and/or failed to account for and pay over any money so received, and/or having illegally expended public moneys or any moneys placed in custody of such public official or former public official by authority of law, and the attorney general brings an action for the recovery of such moneys, such action shall be brought in the name of the state of Indiana upon the relation of the attorney general as plaintiff."

We requested Westphal to reimburse the City of Michigan City for police pension overpayments in the amount of \$75,399.31. (See Summary of Charges, page 8)

SPECIAL INVESTIGATION COSTS

The State of Indiana incurred costs in the amount of \$2,800.12 due to the special investigation of the City's 1925 Police Pension Plan.

1925 POLICE PENSION FUND
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RESULTS AND COMMENTS
(Continued)

Indiana Code 5-11-1-27 states in part:

" . . .(m) If the attorney general institutes civil proceedings related to this section or under [IC 5-11-5-1](#), the attorney general shall seek, in addition to the recovery of any funds misappropriated, diverted, or unaccounted for, restitution of:

- (1) costs incurred by the state board of accounts; and
- (2) all costs and reasonable attorney's fees incurred by the attorney general; in connection with the civil proceedings."

We requested Westphal to reimburse the State of Indiana for special investigation costs in the amount of \$2,800.12. (See Summary of Charges, page 8)

INTERNAL CONTROLS

Internal controls were insufficient due to the lack of oversight and monitoring of the 1925 Police Pension Plan. The City did not have controls in place to verify existence and eligibility of the remaining 49 pensioners, such as reviewing and monitoring obituaries on a periodic basis or determining some other method to verify proof of life. The City was relying solely upon the bank to notify them of individuals who passed away.

The Indiana State Board of Accounts (SBOA) is required under Indiana Code 5-11-1-27(e) to define the acceptable minimum level of internal control standards. To provide clarifying guidance, the State Examiner compiled the standards contained in the manual, *Uniform Internal Control Standards for Indiana Political Subdivisions*. All political subdivisions subject to audit by SBOA are expected to adhere to these standards. The standards include adequate control activities. According to this manual:

"Control activities are the actions and tools established through policies and procedures that help to detect, prevent, or reduce the identified risks that interfere with the achievement of objectives. Detection activities are designed to identify unfavorable events in a timely manner whereas prevention activities are designed to deter the occurrence of an unfavorable event. Examples of these activities include reconciliations, authorizations, approval processes, performance reviews, and verification processes.

An integral part of the control activity component is segregation of duties. . . .

There is an expectation of segregation of duties. If compensating controls are necessary, documentation should exist to identify both the areas where segregation of duties are not feasible or practical and the compensating controls implemented to mitigate the risk. . . ."

INVESTIGATIONS BY OTHER GOVERNMENTAL AGENCIES

Investigation of the pension expenditures of the 1925 Police Pension Fund are also being conducted by the City of Michigan City Police Department.

1925 POLICE PENSION FUND
CITY OF MICHIGAN CITY
EXIT CONFERENCE

The contents of this report were discussed on June 23, 2020, with Duane Parry, Mayor; Yvonne Hoffmaster, City Controller; Amber Lapaich-Stalbrink, Corporation Council; and James Meyer, Council Attorney.



MICHIGAN CITY INDIANA

Office of the Mayor- Duane Parry - Phone: 219.873.1400 Fax: 219.873.1515 email: dparry@emichigancity.com

OFFICIAL RESPONSE

Date: June 24, 2020

Indiana State Board of Accounts
302 West Washington St. Room E418
Indianapolis, IN 46204-2765

Re: 1925 Police Pension Overpayments

The City of Michigan City provides the following response to the audit of the overpayment of police pension funds.

The City has implemented additional internal controls of the pension funds by researching on no less than a quarterly basis, a search of each active pensioner through Google search. This search will be looking for obituaries. As an additional measure, the City will be sending out "Proof of Life" forms to each active pensioner on an annual basis.

Thank you for the opportunity to respond. As usual, your auditors were professional and helpful.

Sincerely,

A handwritten signature in blue ink that reads "Duane Parry".

Duane Parry
Mayor

DUANE PARRY- MAYOR

City of Michigan City - City Hall- 100 East Michigan Boulevard, Michigan City, IN 46360- 219.873.1400- fax 219.873.1515
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1925 POLICE PENSION FUND
 CITY OF MICHIGAN CITY
 SUMMARY OF CHARGES
 (Due to Malfeasance, Misfeasance, or Nonfeasance)

	<u>Charges</u>	<u>Credits</u>	<u>Balance Due</u>
Pamela Westphal, Guardian over Yorkey's estate:			
Police Pension Overpayments, pages 3 and 4	\$ 75,399.31	\$ -	\$ 75,399.31
Special Investigation Costs, pages 4 and 5	<u>2,800.12</u>	<u>-</u>	<u>2,800.12</u>
Totals	<u>\$ 78,199.43</u>	<u>\$ -</u>	<u>\$ 78,199.43</u>

This report was forwarded to the Office of the Indiana Attorney General and the local prosecuting attorney.

AFFIDAVIT

STATE OF INDIANA)
PORTER COUNTY)

I, Kristin Campbell, Field Examiner, being duly sworn on my oath, state that the foregoing report based on the official records of the 1925 Police Pension Fund, City of Michigan City, LaPorte County, Indiana, for the period from June 1, 2015 to December 31, 2019, is true and correct to the best of my knowledge and belief.

Kristin Campbell
Field Examiner

Subscribed and sworn to before me this 14th day of July, 2020.

Robert A. Neal
Notary Public

My Commission Expires: January 24, 2026

County of Residence: PORTER

