

STATE OF INDIANA

IN THE HAMILTON CIRCUIT/SUPERIOR COURT

COUNTY OF HAMILTON

SS:

CAUSE NO.

STATE OF INDIANA *ex rel.* CURTIS  
T. HILL, JR., ATTORNEY GENERAL  
OF INDIANA,

Plaintiff,

v.

NORMAN BURGESS,

Defendant.

**COMPLAINT TO RECOVER PUBLIC FUNDS**

Plaintiff, State of Indiana *ex rel.* Curtis T. Hill, Jr., Attorney General of Indiana (“State”), by counsel, Megan Binder, Deputy Attorney General, for its Complaint to Recover Public Funds, states the following:

**FACTS**

1. State Board of Accounts (“SBOA”), pursuant to Ind. Code § 5-11-1-9, performed an examination of the books, accounts, and records of Wayne Township Volunteer Fire Department, Hamilton County, Indiana (“WTVF”). The results of the examination are set forth in SBOA Audit Report B50098, for the period of January 1, 2013 to December 31, 2016 (“Audit Period”), dated May 25, 2018. *See* Audit Report, attached hereto and incorporated herein as **Exhibit A**.

2. Defendant Norman Burgess (“Burgess”) was the Treasurer for WTVF at all relevant times during the Audit Period.

3. The Audit Report disclosed malfeasance, misfeasance, and/or nonfeasance on the part of Burgess, and was placed by the State Examiner on May 25, 2018, with the Attorney General, pursuant to Ind. Code § 5-11-5-1(a).

4. The Audit Report also disclosed that public funds, which the State seeks to recover upon this Complaint, were either:

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

5. Defendant is either a delinquent officer, sureties of the officer, or any other proper persons against whom recovery of such misappropriated, diverted, or unaccounted for funds may be had, pursuant to Ind. Code § 5-11-5-1.

6. This Complaint is brought by the State of Indiana on the relation of the Attorney General, pursuant to Ind. Code §§ 5-11-5-4 and 5-11-7-1, for the benefit of WTVF.

### COUNT I

Plaintiff, State of Indiana *ex rel.* Curtis T. Hill, Jr., Attorney General of Indiana, by and through its undersigned counsel, complains of Burgess, and says:

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

8. During the Audit Period, Burgess had a duty to properly account for all funds of WTVF, and to not commit acts of malfeasance, misfeasance, and/or nonfeasance.

9. During the Audit Period, Burgess received unauthorized payments from WTVF in 112 instances, totaling \$59,656.49, and without any supporting documentation.

10. For an additional 226 instances during the Audit Period, Burgess initiated unauthorized cash withdrawals totaling \$71,133.70.

11. Of these 226 withdrawals, Burgess used WTVF credit cards for 218 unauthorized cash withdrawals from ATM machines, issued and endorsed 4 unauthorized checks made payable to "Cash", and made 4 cash withdrawals through checking account withdrawal forms submitted to the bank.

12. Additionally during the Audit Period, Burgess issued and endorsed eight unauthorized checks totaling \$2,708.47 paid to the order of "Cash" and "Petty Cash," and without any supporting documentation to validate the payments.

13. On July 13, 2015, Burgess issued and endorsed a check in the amount of \$1,500.00 from WTVF funds, made payable to "Cash" and noted "Village [sic] Fair (Lapel)" in the check's memo line.

14. However, during SBOA's examination of WTVF, the Treasurer of Lapel Community Association indicated that the Association had not received the \$1,500.00.

15. A review of Burgess' personal bank account revealed a \$1,500.00 cash deposit on the same day he issued and endorsed the foregoing check, on July 13, 2015.

16. On February 20, 2014, the Wayne Township Trustee issued a check to the Department in the amount of \$5,074.00, but the deposit ticket, signed by Burgess, noted a "less cash received" amount of \$1,250.00, making the net deposit \$3,824.00.

17. In addition, Burgess used WTVF debit cards issued for unauthorized personal purchases totaling \$48,299.22, including but not limited to: charges for funeral expenses; 251 charges at fuel/convenience stores; 126 charges for food purchases unaccredited to Department business; 104 charges at online retail merchants; and child support payments.

18. Further, Burgess also caused the Department to incur 200 separate charges associated with overdraft fees, ATM fees, penalties, interest, and other charges, totaling \$6,827.28.

19. Moreover, Burgess failed to timely remit federal and state payroll taxes between 2014 and 2016, resulting in WTVF paying unnecessary and excessive penalties and interest payments to the Internal Revenue Service (IRS), in the amount of \$5,428.29.

20. As a direct and proximate result of the breach of Burgess's duty to WTVF, WTVF suffered a pecuniary loss in the amount of \$196,803.45.

21. As a direct and proximate result of the breach of Burgess's duty to WTVF, SBOA incurred additional audit costs in the amount of \$41,571.60.

22. Consequently, Plaintiff is entitled to restitution and disgorgement from Burgess of all ill-gotten gains unjustly and wrongfully received and funds diverted from WTVF and the State as a result.

WHEREFORE, Plaintiff, State of Indiana *ex rel.* Curtis T. Hill, Jr., Attorney General of Indiana, respectfully requests that the Court: (1) enter judgment for the State and against Defendant Norman Burgess in the amount of \$238,375.05; (2) order Defendant Norman Burgess to disgorge all ill-gotten gains and any diverted funds under Ind. Code § 5-11-5-4, as a result of his wrongful misappropriations of public funds; and (3) grant the State all other just and proper relief.

## COUNT II

Plaintiff, State of Indiana *ex rel.* Curtis T. Hill, Jr., Attorney General of Indiana, by and through its undersigned counsel, complains of Burgess, and says:

23. 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.

24. 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, Ind. Code § 35-42-3-3, Ind. Code § 35-42-3-4,

and/or Ind. Code § 35-45-9, the party 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) court costs; (3) a reasonable attorney’s fee; (4) and other miscellaneous costs and expenses.

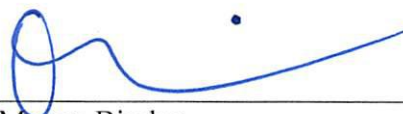
25. The State is a party suffering a pecuniary loss as a result of a violation by Burgess—where he: received unauthorized from WTVF in 112 instances, totaling \$59,656.49, and without any supporting documentation; initiated unauthorized cash withdrawals totaling \$71,133.70 in 226 additional instances; issued and endorsed eight unauthorized checks totaling \$2,708.47 paid to the order of “Cash” and “Petty Cash,” and without any supporting documentation to validate the payments; issued and endorsed a check in the amount of \$1,500.00 from WTVF funds, made payable to “Cash” and noting a vendor in the memo line that has never received the alleged payment; reduced the amount WTVF received from the Wayne Township Trustee from \$5,074.00 to \$3,824.00, resulting in funds improperly not deposited in WTVF’s bank account in the amount of \$1,250.00; used WTVF debit cards issued for unauthorized personal purchases totaling \$48,299.22; and also caused the Department to incur 200 separate charges associated with overdraft fees, ATM fees, penalties, interest, and other charges, totaling \$6,827.28—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 B50098.

26. The State, on behalf of the City, is entitled to the relief described in Ind. Code § 34-24-3-1, including three times the actual loss, which is \$574,125.48, while offsetting any recoveries obtained by WTVF and/or the State, court costs, and a reasonable attorney’s fee.

WHEREFORE, Plaintiff, State of Indiana *ex rel.* Curtis T. Hill, Jr., Attorney General of Indiana, respectfully requests that the Court (1) enter judgment for the State and against Defendant Norman Burgess; (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,

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By:   
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