

LEGAL DEPARTMENT ANNUAL REPORT - 2004

I. OVERVIEW

In 2004 the City of South Bend Legal Department continued its role of providing support, advice and representation to various units of the City of South Bend and representing the City in litigation in state and federal courts, and before administrative agencies.

During 2004, the nine attorneys of the City Attorney's staff provided assistance to all of the departments and divisions within the City of South Bend, together with various City and City-related boards, commissions, and authorities, including the Alcoholic Beverage Board, the Human Rights Commission, the Board of Zoning Appeals, the Redevelopment Commission, Redevelopment Authority, Board of Public Safety, Board of Public Works, Park Board, the Century Center Board, and the Historic Preservation Commission.

The Legal Department provides advice to each of these departments and entities with respect to the conduct of their business under local, state, and federal law so that each entity will operate in compliance with all legal requirements. The department also represents the City in disputes in state and federal court and before administrative agencies in order to protect the City's interests when the City has been named as a defendant in lawsuits or administrative actions or to advance the City's interests when the City has a claim against a third party and litigation is the only way to achieve that goal of advancing and protecting the City's claims and interests.

The department also engages in negotiations with outside parties to establish the City's role in various projects and undertakings and prepares a variety of documents to memorialize the relationships which have been established to provide the framework for an ongoing relationship.

 In 2004 the Department initiated the first class of the South Bend Local Government Academy to better communicate the role and operations of the City to local community leaders and the public at large.

II. SELF-INSURANCE

The department managed the City's self-insurance liability program, paying out \$330,949.26 in claims against the City in 2004. If the risks covered by the self insurance program had been fully insured, the estimated premiums would have been in the \$2.5 Million to \$5 Million range. The cost savings are thus substantial although the amount of payout varies from year to year. The history of the City's liability self-insurance cost is as follows:

Year	Number of New Claims Filed	Claims Paid
1997	268	\$ 354,633.16
1998	249	\$ 414,674.30
1999	343	\$ 541,026.11
2000	245	\$1,121,523.20
2001	352	\$ 648,242.73
2002	220	\$ 341,655.19
2003	209	\$ 332,005.11
2004	220	\$ 330,949.26

The claims review process, in conjunction with the defense, negotiation, and settlement process, assists City departments in identifying areas of risk and engenders discussion and action on the best ways to manage that risk.

III. PROSECUTION OF ORDINANCE VIOLATIONS

The Legal Department also prosecutes claims in the local courts for violations of City ordinances, occasionally through the injunction process, but most often through civil actions to collect fines. During 2004, \$161,466.00 was collected for ordinance violations and other miscellaneous accounts for various departments. The history of total collections is as follows:

1998	\$ 70,797.92
1999	\$ 75,446.00
2000	\$ 78,713.17
2001	\$114,053.78
2002	\$122,226.37
2003	\$160,036.66
2004	\$161,466.00

A breakdown of the history for the collection of ordinance violations, which include code enforcement, loud and raucous noise, parks infractions and any other miscellaneous violation of City ordinances, and parking ticket violations is as follows:

	<u>Ordinance Violations</u>	<u>Parking Tickets</u>
2000	\$30,544.17	\$17,866.00
2001	\$70,737.27	\$15,703.00
2002	\$82,005.55	\$17,168.00
2003	\$96,008.56	\$13,736.65
2004	\$92,065.00	\$25,122.00

IV. LEGISLATIVE SERVICES

Legislative work of the department includes preparation of proposed ordinances to be submitted to the South Bend Common Council and review of proposed state legislation pending before the Indiana General Assembly.

V. TRAINING ON LEGAL ISSUES

The Legal Department also provides information and training to City employees on changes in the law. Members of the City Attorney's staff have provided training to the South Bend Police Department, the Department of Community and Economic Development, and the Department of Code Enforcement with respect to various issues.

Attorneys from the Legal Department also made presentations at a St. Joseph County Bar Association seminar on municipal law on April 22, 2004 held in South Bend. Presentation topics included public access to records and open door law, City code and common council practice, code enforcement and licensing, public works and historic preservation, tort claims against the City, parking tickets and other fines, eminent domain and City acquisition of private property.

The Legal and Code Enforcement Departments also hosted officials from the City of Aurora and shared information to assist them in organizing and providing legal support for a code enforcement department. The department held a seminar for the Community and Economic

Development staff entitled “Shop til You Drop ... or at least until the TIF Runs Out. Everything you every wanted to know about Contracting and Procurement by the Redevelopment Commission.” This presentation also included basic information about the Department of Public Works.

In June a member of the Department and the Mishawaka City Attorney’s office team taught a session to the Indiana Municipal Lawyers Association on code enforcement issues. The Department also provided assistance to the Airport Authority in training taxi drivers and company owners and provided teaching at two classes at the Forever Learning Institute, on the work of the City Legal Department and some other departments within the City.

VI. LOCAL GOVERNMENT ACADEMY

The Legal Department designed a ten week Local Government Academy in 2004 to introduce residents to City operations and encourage them to participate in local government. City employees served as the faculty and the "classroom" traveled to the Street, Police and Fire Departments, O’Brien Center, Century Center, the Morris Performing Arts Center, the Palais Royale and Human Rights Office, the Near Northwest Neighborhood Center, Rose Brick & Material, and the Common Council Chambers, where class members presented a resolution at a mock Council meeting. The class also took a bus tour of several redevelopment, public works and neighborhood projects.

The Academy showed people parts of the City they had never seen and how the City is working to serve them. The next session begins January 26, 2005 and there is a waiting list for the twenty-five available seats.

VII. LITIGATION

At the end of 2004, the Legal Department was involved in the following litigation on behalf of the City of South Bend:

<u>Litigation Area</u>	<u>City as Plaintiff</u>	<u>City as Defendant</u>	<u>Pending Claims</u>
Code Enforcement	77	7	4
Injunctions	21		
Police Actions		13	9
Vehicles Accidents		8	8
Condemnation	1		
Personal Injury (not vehicle)		15	3
Discrimination	2	5	
Indiana Civil Rights Commission		2	
Property Damage			2
Fair Labor Standards Act		2	
Administrative Appeals		1	
Utility Rates		2	
Foreclosures	6	136	
Misc.	31	3	2
Total	138	194	28

Minor miscellaneous matters not included in this table are infraction cases in Small Claims Court and Code Enforcement collections in Small Claims Court.

The Legal Department also participated in four mediation sessions in 2004 in an attempt to resolve disputes in litigation. All of these mediation sessions resulted in settlement of the disputes.

Department attorneys also participated in the following administrative hearings in 2004:

<u>Agency</u>	<u>Number of Hearings</u>
Human Rights Commission	12
Code Enforcement	70
License Appeals	14
Board of Safety - Disciplines	1
Unemployment Hearings	6
Personnel - 3 rd Step Grievances	6

In 2004, the Legal Department was active in pursuing the drug and disorderly house ordinance. A total of 117 Notices to Abate under the Drug House Ordinance and 26 Notices to Abate under the Disorderly House Ordinance were sent to owners/occupants in the City. Eleven of these notices resulted in the filing of injunction lawsuits.

Major litigation concluded during 2004 included the Caterpillar case which involved property damage. Significant litigation in process included the Police Department overtime case, the challenge to the City's Adult Business Ordinance, the Roseland water/sewer dispute, the Clay utility customers refund claim, and the Richard Alexander case.

VIII. NEGOTIATIONS

Negotiations during 2004 involving department attorneys included collective bargaining with FOP Lodge 36 and Firefighters Local No. 362, settlement negotiations and mediation to resolve pending claims and litigation, and project term negotiations to assist economic development activity.

IX. CIVIC AND PROFESSIONAL PARTICIPATION BY STAFF ATTORNEYS

During 2004, several of the attorneys in the Legal Department participated in activities which contributed to the City's presence and to their own professional development. These activities include the IACT Legislative Committee, St. Joseph County Bar Association Board of Governors; Character and Fitness Committee of the Indiana Supreme Court; Pro Bono Committee and Bench and Bar Committee of the St. Joseph County Bar Association, Robert A. Grant Inn of Court; State Bar Association American Citizenship Committee; International Municipal Lawyers Association; and Indiana Association of Cities and Towns.