



**City of Lawrenceburg
City Attorney's Office
Lawrenceburg, Indiana 47025**

It is the position of the City Attorney's Office that the invoice submitted for work done at Fourth and Front Street cannot be paid, and to do so would violate the law. This expenditure was never voted on, never appropriated, never budgeted, and never bid, all steps required by law. There are also significant issues with the invoice itself, both direct and indirect, which we will discuss. For these reasons, it cannot and should not be paid. Furthermore, the Indiana State Board of Accounts and Reedy Financial Group support the position that we cannot pay this invoice.

In order to review this bill appropriately, Reedy Financial Group was asked to conduct an accounting and provide an analysis, and the Indiana State Board of Accounts was contacted for review. The SBOA stated that they "know of no law that would allow the City to pay this bill", and suggested that the City Attorney write a legal opinion. To prepare the legal opinion, all applicable State and local law was reviewed, as was the invoice with supporting documentation and the meeting minutes related to this project.

In 2017 City Council discussed widening the turn at Fourth and Front Streets by moving infrastructure off of the curb. At that time, the City Engineer asked for an engineering estimate for the cost to move the pole so it could be submitted in a Community Crossing grant application. Olin Clawson provided a cost estimate of \$180,000. This is contained in the grant application prepared by Land Consultants and submitted to the State.

The pole relocation project was never presented for a vote of approval, no engineer's estimate was obtained, it was never sent out for bids, was never appropriated, and never budgeted. In fact, it seems that it was only discussed at two utility board meetings. At an April 29, 2019 USB meeting, Collin Browning stated that the pole relocation would cost \$223k. No engineer's estimate was presented and no vote was taken. It was again discussed at the June 24, 2019 meeting. Collin stated the project would cost \$359k. Olin Clawson stated the project could get as high as \$400k. Olin also stated that the work would be done "in house". Again, no vote was taken.

At the end of August Olin Clawson submitted an invoice for \$1,327,987.87 to the City to be paid using City taxpayer funds. A financial analysis was conducted and revealed the following:

- \$848,689.31 to outside vendors for working on the project, including labor for linemen, apprentice linemen, foremen, and other contracted labor starting in March of 2019.
- \$331,833.61 in materials
- \$228,827.08 in “admin fees” added to each invoice (approx. 40% markup by LMU)
- \$147,464.95 in LMU wages, marked up to “recover benefits” (benefits added to hourly wage even though the City already pays them)

LMU Wage Breakdown:

- 10 hours of overtime at \$210/hour for Olin Clawson = \$2100 (he is a salaried employee)
- 20 hours of overtime for two internet workers at \$94.68/hour = \$946.80
- 7 linemen each working 280 hours at \$63.12/hour = \$17,673.60
- 1 foreman working 280 hours at \$66.97 = \$18,751.60
(280 hours billed for the month of July for each employee = 12.7+ hours every working day or 35 8 hour days??)
- Fiber costs unrelated to the relocation project
- The tree that was billed to be removed as part of this project was actually a mulberry tree that fell in an alley on Center Street
- Multiple utility poles and other equipment unrelated to moving the pole

By law, only the Mayor can propose an additional appropriation. Then Council votes to approve it and we can budget to pay a project. Before an appropriation can be proposed however, an engineer’s estimate is required as well as the lowest responsive and responsible bidder to determine actual cost. Again, there was no vote held, no appropriation, no line item in the budget, no engineer’s estimate, and no bidding was done at all.

Even if those steps were taken, there are significant issues with this invoice that require further examination and reporting. Olin Clawson told the city this project would cost \$180,000 and submitted that number to be included in a grant application. He then stated in a public meeting that it would cost \$400,000 at most. Two months later we get a bill for more than \$1.3m of taxpayer money.

During the analysis of the invoice, it is also important to take a look at the current state of LMU finances and their cash position. Our reports indicate that on 1/1/18, the electric utility had a cash balance of around \$10.1m. On 12/31/18, that balance had decreased to around \$4.1m. As of 7/31/19, the cash balance is only \$688k. We can find no record of voting to approve spending of this nature. We have been cautioned that having such a low cash balance is not recommended for a utility. It is a concern that utility rates may be raised to recover the cash that was spent.

We have been conducting an audit using Reedy Financial Group and Umbaugh (which is now Baker Tilly). Their findings are that this money has likely been spent on the fiber internet company. A review of the minutes show no votes were ever taken, no budget was ever presented, and this spending was not approved.

We will continue to investigate this issue and other issues we have uncovered with the finances of LMU. We hope that LMU will cooperate fully with the investigation conducted by the Clerk-Treasurer's Office and our accounting firms. It is concerning that this project, the tent construction, the rodeo, and the fiber internet project all seem to share in common a general lack of official voting, budgeting or reporting on spending. This should also be investigated further.

For these reasons, and based on the law, the opinions of Reedy Financial Group, Umbaugh/Baker Tilly, and the recommendation of the Indiana State Board of Accounts, it is our opinion that we cannot pay this invoice.

Regards,

A handwritten signature in black ink, appearing to be 'Delmar D. Weldon III', with a long, sweeping underline.

Delmar D. Weldon III
City Attorney, City of Lawrenceburg