STATE OF INDIANA	)	IN THE LAKE SUPERIOR COURT
	)	ROOM NUMBER ONE
COUNTY OF LAKE	)	SITTING IN HAMMOND, INDIANA

LAKE COUNTY COUNCIL	)	
Petitioner/Counter Respondent	)	
	)	
	)	CAUSE NO.: 45D01-2011-MI-766
	)	
and	)	
	)	
LAKE COUNTY BOARD OF	)	
COMMISSIONERS,	)	
Respondent/Counter-Petitioner	)	

MEMORANDUM IN SUPPORT OF THE LAKE COUNTY BOARD OF COMMISSIONERS' MOTION TO CORRECT ERRORS

I. STATEMENT OF FACTS

A. The trial court after a hearing on April 16, 2021 issued the order that is attached to this memorandum as Exhibit A, including the two Ordinances.

B. The Lake County Board of Commissioners on May 12, 2021 timely filed its motion to correct errors.

II. TIDBITS OF HISTORY BEFORE ARGUMENT

A. Sometimes it is helpful to place legislation in historical perspective. In the present case this is a good approach.

B. The 1980 Session of the Indiana General Assembly is one that is historic. The Indiana General Assembly took the following steps:

1. In the Acts of 1980, Public Law 211, the Indiana General Assembly took two actions that are relevant to the current case.

    a. First, in Chapter 3, Section (a) and (b), pages 1659-1660 the Indiana General Assembly enacted the Home Rule Statute thereby eliminating Dillon's rule which was a rule of strict interpretation of a unit's powers in its precedential holding that a unit had only the powers granted to it in the express words of a statute or the powers that are necessarily or fairly implied in or incident to the powers expressly granted in the statute.

    b. Second, in Chapter 2, Section 9(1), page 1658 the Indiana General Assembly defined the legislative body in a county having two or more second class cities

as the county council thereby giving the Lake County Council ordinance powers but did not define the organizational structure of this new form of county government.

2. In the Acts of 1980, Public Law 212 the Indiana General Assembly recodified in the current Title 36 almost all of the statutory language covering governmental units that was in Title 17, Title 18, and Title 19. The key points in reference to the Acts of 1980, P.L. 212 are the following:

    a. The Indiana General Assembly had enacted over the years special legislation that applied to specific counties, cities, or towns by the use of a classifying parament such as population or number of a certain type of city or town.

    b. The Indiana General Assembly in 1980 did not recodify into Title 36 the special legislation that appears in IC 36-1-3.5 et seq. but left this for the 1981 Session.

3. In the 1981 Session the Indiana General Assembly addressed the two carryover issues. They enacted legislation as follows:

    a. First, in Public Law 11, Acts of 1981 the Indiana General Assembly enacted IC 36-2-3.5-1 et seq. which is the current Lake County form of county government. Remember, in the 1980 Session the Indiana General Assembly had given the Lake County Council the legislative powers but did not define the unit of government in detail for Lake County. This was accomplished in 1981 with the enactment of IC 36-2-3.5-1 et seq.

    b. Second, in P. L 17, Acts of 1981 the Indiana General Assembly stated what it was going to do with respect to the special legislation applicable to counties, cities, and towns that met the designated qualifying parameters which special legislation was not recodified into Title 36 during the 1980 Session.

C. So, both the form of government for Lake County and what to do with the special legislation were on the agenda of the Indiana General Assembly in 1981.

III. LAW ON INTERPRETATION OF STATUTES

The principles of the law of statutory interpretation are well documented and have remained constant over the years. The following principles have been ingrained into the nexus of this area over a period of time covering all aspects of the law:

A. Statutory interpretation begins with a determination as to whether the legislature has spoken clearly and unambiguously on the point in question. Indiana Dept. of Revenue v. Miller Brewing Co., 975 N.E.2d 800, 802 (Ind. 2012); City of Carmel v. Steele, 865 N.E.2d 612, 617 (Ind. 2007); In re S.B., 896 N.E.2d 1243, 1246 (Ind. Ct. App. 2008).

B. The interpretation of a statute is necessary only where the statute is ambiguous or of doubtful meaning. Indiana Dept. of State Revenue v. Horizon Bancorp, 644 N.E.2d 870, 872 (Ind. 1994); Sue Yee Lee v. Lafayette Home Hospital, Inc., 410 N.E.2d 1319,1322 (Ind. Ct. App. 1980); Town of Merrillville v. Lincoln Utilities, Inc., 355 N.E.2d 851, 855 (Ind. App. 1976).

C. If the language of a statute is plain and unambiguous, there is nothing to construe. Indiana Public Employee Retirement Fund v. Bryson, 977 N.E.2d 374, 377 (Ind. Ct. App. 2012) ; In re J.J., 912 N.E.2d 909, 910 (Ind. Ct. App. 2009); Recker v. State, 904 N.E.2d 724,726 (Ind. Ct. App. 2009).

D. When a statute is clear and unambiguous, a court must not construe or interpret the statute. In re Paternity of Baby Doe, 734 N.E.2d 281, 285 (Ind. Ct. App.2000); Guerin v. Schaefer, 727 N.E.2d 1119, 1121 (Ind. Ct. App. 2000); Goff v. Wal-Mart Stores, Inc., 719 N.E.2d 1260, 1261 (Ind. Ct. App. 1999).

E. When clear and unambiguous, the court must give the statute its plain, clear, or ordinary meaning McCabe v. Commissioner, Indiana Dept. of Ins., 949 N.E. 2d 816, 819 (Ind. 2011); Butler v. Indiana Dept. of Ins., 904 N.E.2d 198, 202 (Ind. 2009); Pierce v. State, 29 N.E. 3d 1258, 1265 (Ind. 2015).

F. When a statute is clear and unambiguous, a court need only require that words and phrases of the statute be taken in their plain, ordinary, and usual sense. Basileh v. Alghusain, 912 N.E.2d 814 (Ind. 2009); State v. American Family Voices, Inc., 898 N.E.2d 293 (Ind. 2008); Gauvin v. State, 883 N.E.2d 99 (Ind. 2008)

IV. SUMMARY

A. There are two arguments that are dispositive of the issues in this motion to correct errors. Based on these the language used in the two ordinances violates various statutes and thus the order of this court is contrary to law.

B. The two dispositive arguments are as follows:

1. **First Dispositive Argument**: In IC 36-1-3.5-1 which is the purpose clause of the 1981 transfer of jurisdiction statute, the Indiana General Assembly specifically and expressly identified the home rule power of a governmental unit as the implementation method that had to be used. In IC 36-1-3-6(a) there is the home rule mandate that if there is a statute defining how a power is to be used, then the unit wanting to exercise that power must do so in the manner prescribed in the statute. The specific power to negotiate contracts is given to the Lake County Commissioners in IC 36-2-3.5-4(b)(9). The home rule statute mandates that Lake County in order to contract has to do so through the Lake County Commissioners and in no other way. The verb used in IC 36-2-3.5-4(b)(9) is "shall negotiate" and is assigned to the County Executive in IC 36-2-3.5-4(b)(9). Thus, the Lake County Commissioners with the sole authority to contract for Lake County are the

purchasing agency as the body with the power to contract in IC 5-22 not the Lake County Council.

2. **Second Dispositive Argument**: In P.L. 17**,** Acts of 1981, Section 29(c) attached as Exhibit E, both the county purchasing agency statute contained in IC 17-2-77 and the county data agency statute contained in IC 17-2-74 were expressly repealed. Even though repealed, the Indiana General Assembly gave the county legislative body until September 1, 1983 to do one of two things. First, the legislative body could adopt an ordinance specifically rejecting the provisions of the statutes in IC 36-1-3.5-5 or second, the legislative body could adopt ordinances "substantially incorporating the provisions of the law into the ordinances of the unit." See, Exhibit E, P.L 17, Section 30. The failure to act either way by a legislative body by September 1, 1983 constituted the repeal of IC 36-1-3.5-5 and the efforts of the Indiana General Assembly after the 1990 and 2010 decennial census to amend the statute did not revive the provisions of IC 36-1-3.5-5.

3. **Argument Number Three and Argument Number Four** are presented to demonstrate that the clear intent of the Indiana General Assembly has been not to place the power to contract with a county fiscal body since the County Reform Act of 1899 and that this intent was most recently demonstrated in 1995 in how the term legislative body was defined in the guaranteed energy saving statute so as to include the county executive.

4. **Argument Number Five** is that the decision of the trial court gives to the Lake County Council the authority to create a new form of county government which violates Article 6, Section 10 of the Indiana Constitution.

C. In the most recent session of the Indiana General Assembly, that body corrected a provision in the county veto statute that had been inadvertently repealed in 2019. The correction was in Acts of 2021, P.L 22-2021, SEA 35. The legislation was retroactive and therefore remedied any problem with the power to veto and to override a veto. Therefore, for the purposes of its motion to correct errors, the Lake County Board of Commissioners agrees that the enactment, veto, and override of the veto of the two ordinances were all procedurally correct. The Commissioners do not, however, agree that the substantive content of the two respective ordinances is valid since there are provisions in the two ordinances that specifically violate the separation of powers requirement in IC 36-2-3.5-2 and the Lake County Commissioners power to negotiate contracts in IC 36-2-3.5-4(b)(9)

D. There are various public laws referred to in this memorandum, and the trial court is requested to take judicial notice of these laws. Those to which there will be reference are listed below:

1. Acts of 1980, P.L. 211 which contains the home rule power statue and the statute that defined the Lake County Council as the legislative body. (Exhibit B, 25 pages).

2. Acts of 1980, P.L. 212 in which most of the statutory provisions in Title 17, 18 and 19 are recodified into Title 36. (Exhibit C, 173 pages).

3. Acts of 1981, P.L. 11, Section 147 where the Indiana General Assembly established the specific form of county government in Lake County and St. Joseph County. (Exhibit D, 2 pages). This is codified as IC 36-2-3.5-1 et seq.

4. Acts of 1981, P.L. 17 which contains the provisions of IC 36-1-3.5, the transfer of jurisdiction statute, and more specifically, IC 36-1-3.5-5 and Sections 29 and 30 (Exhibit E, 22 pages).

5. Acts 2012, P.L. 119, Section 141 where after the 2010 census the Indiana General Assembly changed the population parameter to specifically name Lake County in IC 36-1-3.5-5 (Exhibit F, 1pages).

6. Acts of 2021, P.L. 22-2021 Section 5, where the Indiana General Assembly corrected the inadvertent error in the 2019 session when the veto power in IC 36-2-4-8 of the county executive was removed by restoring retroactively to July 1, 2019 the veto provision of the county executive. (Exhibit G, 8 pages).

V. ARGUMENT AND LAW

A. FIRST ARGUMENT: The purpose clause of the 1981 transfer of jurisdiction statute specifically and expressly identified a unit's home rule power as the sole implementation method and thereby included its restriction that if there existed a manner to exercise a power the unit had to follow that manner leading to the conclusion that the Lake County Commissioners with their power to negotiate contracts are the purchasing body in IC 5-22.

1. The Indiana General Assembly enacted IC 36-1-3.5-1 as the purpose clause to expressly and clearly state how any action to be taken under that law was to be implemented by a unit of government including Lake County. There is no need for any statutory interpretation. The statute itself is the best evidence of the legislative intent.. State v. American Family Voices, Inc., 898 N. E. 2d 293, 297 (Ind 2008); State v. Oddi–Smith, *878* N.E.2d 1245, 1248 (Ind.2008), Grody v. State, 278 N.E.2d 280, 285 (1972).

2. In Section 1, the Indiana General Assembly expressly established its policy and its roadmap for the Lake County Council as follows:

"The policy of the state is that in all cases where a general law can be made applicable, all laws should be general and of uniform operation throughout the state, as provided by Article 4, Section 23 of the Constitution of Indiana. In addition**, the policy of the state is that in local affairs where a general law cannot be made applicable, the applicable laws should be determined by the local legislative authorities under the home rule provisions of this title, particularly I.C. 36-1-**

3-6". Therefore, the purpose of this chapter is to transfer to the appropriate local authority jurisdiction over local matters that, before the 1981 regular session of the general assembly, have been subjects of statutory concern" (underline and bold added).

3. The requirement that the Lake County Council as the legislative body utilize its home rule power to implement 36-1-3.5-5 is clear. The Indiana General Assembly specifically stated this mandate with the phrase ""under the home rule provision of this title , particularly I. C. 36-1-3-6". No statutory interpretation is required. When clear and unambiguous, a trial court must give the statute its plain, clear, or ordinary meaning McCabe v. Commissioner, Indiana Dept. of Ins., supra p. 3; Butler v. Indiana Dept. of Ins., supra p. 3; Pierce v. State, supra p. 3. When a statute is clear and unambiguous, a court need only require that the words and phrases of the statute be taken in their plain, ordinary, and usual sense. Basileh v. Alghusain, supra p. 3; State v. American Family Voices, Inc.,supra p. 3 ; Gauvin v. State, supra p 3; The intent is clear. McCabe v. Commissioner, Indiana Dept. of Ins. id; , Butler v. Indiana Dept. of Ins., id.; Pierce v. State, id. The Indiana General Assembly required that the roadmap to follow was the home rule procedure, and this had to occur before September 1, 1983 (See Exhibit E, Section 30(c).

4. IC 36-1-3-5 (a) states that "(a) Except as provided in subsection (b), a unit may exercise any power it has to the extent that the power: (1) is not expressly denied by the Indiana Constitution or by statute." But, there is an express restriction to the aforementioned statement. By virtue of IC 36-1-2-6(a) "if there is a constitutional or statutory provision requiring a specific manner for exercising a power, a unit wanting to exercise the power must be so in that manner." (underline added). The power to negotiate contracts on behalf of Lake County rests solely with the Lake County Commissioners by statute See Exhibit D where in IC 36-2-3.5-4(b)(9) the Indiana General Assembly specifically grants this power to the Lake County Commissioners. See also, Tippecanoe County v. Indiana Manufacturers Association, 465 N. E. 2d 463, 465 (Ind. 2003), Pinnacle Properties Development Group, LLC v. City of Jeffersonville, Indiana, 893 N. E. 2d 726, 727 (Ind. 2008), Board of Commissioners of LaPorte County v. Town & Country Utilities, Inc. 791 N, E, 2d 249, 251 (Ind. App 2003). So, by the provisions of the home rule statute which is the only method to implement IC 36-1-3.5-5, the Lake County Commissioners with the power to negotiate contacts is the only method allowed for Lake County to contract. By simply following the roadmap expressly laid out by the Indiana General Assembly in the purpose clause, IC 36-1-3.5-1, without any statutory interpretation this is the result. The Lake County Commissioners not the Lake County Council has the power to contract for Lake County.

5. The next logical issue for the Court to decide is whether "purchasing" as set forth in IC 5-22-1 et seq. is contractual in nature. A review of the definition revels that purchasing is contractual.

6. I.C. 5-22-2-24 defines what a "purchase" is and how a "purchase" is to be performed by governmental agencies.

   (a) "Purchase" includes buy, procure, rent, lease, or otherwise acquire.

   (b) The term includes the following activities:
      (1) Description of requirements.
      (2) Solicitation or selection of sources.
      (3) ***Preparation and award of contract.***
      (4) ***All phases of contract administration.***
      (5) ***All functions that pertain to purchasing.***

   Id., Emphasis added.

7. I.C. 5-22-2-25 also states "Purchasing agency" means a ***governmental body*** that is authorized to enter into ***contracts*** by this article, rules adopted under this article, or **by another law**." (Emphasis added). Clearly negotiating contract on behalf of the County under IC 36-2-3.5-4(b)(9) is another law. Because purchasing is a directive of the Commissioners' contracting powers, purchasing can only be conducted by the Board of Commissioners. The logical conclusion is that the Lake County Commissioners are the purchasing agent for Lake County under IC 5-22-1 et seq. There is no need for statutory interpretation. The roadmap laid out by the Indiana General Assembly led to this application of the term "purchasing agency".

8. The Lake County Council as the county legislative body also has specific powers and duties assigned to it. Applicable to the issues pertinent to the issues before the court are as follows:
   (3) pass all ordinances, orders, resolutions, and motions for the government of the county, in the manner prescribed by IC 36-2-4.
   ****
   (5) conduct investigations into the conduct of county business for the purpose of correcting deficiencies and insuring adherence to law and county policies and regulations; and
   (6) establish, by ordinance, ***new county departments***, divisions, or agencies whenever necessary to promote efficient county government.

9. In its original ruling, this Court found that the Constitutional Separation of Powers was inapplicable because the Indiana Supreme Court's decision in Buncich. However, in Buncich there was no statute specifically establishing in clear and concise language a separation of powers. The Commissioners do not dispute the finding in Buncich but it simply does not apply to the current case. The Indiana General Assembly gave a specific grant of statutory separation of powers for the Lake County Council as the county legislative body and the Lake County Commissioners as the county executive in I.C. 36-2-3.5-2. Again, no statutory interpretation is required. The Indiana General Assembly specifically provided for a division and separation of powers in Lake County as follows:

> "The powers of the county are divided between the executive and legislative branches of its government. A power ***belonging*** to one (1) branch of the county's government ***may not*** be exercised by the other branch." Emphasis added.

10. The separation of powers principle is specifically and expressly made applicable to Lake County through I.C. 36-2-3.5-1 and must be given its full meaning and effect when making the determination of what branch of the Lake County Government creates departments and which branch supervises those departments and negotiates contracts on behalf Lake County. Given the specifically assigned power and duty to negotiate contracts on behalf of Lake County contained within IC 36-2-3.5-4(b)(9), the Indiana General Assembly also assigned the contractual duties contained in IC 5-22, et seq. to the Lake County Commissioners. A "purchasing agency" means a ***governmental body*** that is authorized to enter into contracts", and the Lake County Commissioners are expressly authorized to negotiate contracts for Lake County. This is not statutory interpretation but simply following the roadmap. So, being the sole body with the express statutory power to negotiate contracts on behalf of Lake County, the Lake County Board of Commissioners are the only Lake County body authorized to enter into contracts. Thus, the Lake County Commissioners are the purchasing agency in IC 5-22 not the Lake County Council.

11. The Indiana General Assembly was very clear in what was required under IC 36-1-3.5-1 and 5 in P.L. 17, Acts of 1981. The roadmap laid out does not meander. The steps that the Lake Cunty Council had to follow are as follows:

    a. First, the Lake County Council had to follow the provisions of the home rule statute.

    b. Second, they had to follow the provision in the home rule statute that states that if there is a statute defining how a unit must exercise a power that is the only way the unit can exercise that power.

    c. Third, there is the statutory directive in IC 36-2-3.5-4(b)(9) which gives to the Lake County Commissioners the sole authority to negotiate contracts for Lake County.

    d. Fourth, if the Lake County Council wanted to exercise jurisdiction over IC 17-2-44 and IC 17-2-77, the data processing and purchasing agency statutes, the action had to be taken before September 1, 1983.

    e. Fifth, in the ordinances the Lake County Council had to recognize the authority of the Lake County Commissioners to negotiate contracts, had to recognize the separation of powers principle, and had to recognize that the Lake County

Commissioners have statutory authority to set the rules and regulations for the offices, departments, and agencies within their county executive jurisdiction.

f. The Lake County Council took no action by ordinance before September 1, 1983 in compliance with the purpose clause in IC 36-1-3.5-1.

B. SECOND ARGUMENT: IC 36-1-3.5-5 that forms the sole basis of the Lake County Council's argument which was adopted by the trial court was repealed by the provisions of Sections 29 and 30 of P.L. 17, Acts of 1981 and was not in existence on the date that the Lake County Council enacted both ordinances since it was repealed on September 1, 1983. IC 36-1-3.5-5 that forms the sole basis of the Lake County Council argument was repealed as of September 1, 1983 and was not in existence on the date that the Lake County Council enacted Lake County Council Ordinance 1451B and Lake County Council Ordinance 1451M. Therefore, the only basis for enacting the two ordinances are the home rule provisions in IC 36-1-3-1 et. seq. which cannot violate the separation of powers provisions of IC 36-2-3-5-2.

1. The purpose of Section 29 and Section 30, P. L .17, Acts of 1981 in conjunction with IC 36-1-3.5-5 is expressly stated by the Indiana General Assembly in Sections 29 and 30 of P. L 17, Acts of 1981.

2. A copy of this law which includes Section 29 and Section 30 is attached as Exhibit E.

3. **First, the express purpose was to repeal as a statute I.C. 17-2-44 and IC 17-2-77.**

   a. In Section 29 (c) on page 340 of Exhibit E, the Indiana General Assembly expressly repealed the four statutes listed in IC 36-1-3.5-5 which applied to Lake County by using the words that: "The following provisions of the Indiana Code, which are applicable to certain counties, are repealed: IC 17-2-73; **IC 17-2-74**; IC 17-2-76; **IC 17-2-77**; **IC 17-3-29**; IC 17-3-60; **IC 17-3-73**; IC 19-7-17.5." (Bold added to highlight the statutes applicable to Lake County) (See pages 325 and 340 **of** Exhibit E.)

   b. The two statutes that are the subject matter of the current litigation are IC 17-2-44 (County Data Processing Agency) and IC 17-2-77 (County Purchasing Agency). These two statutes are specifically identified as statutes that "are repealed". The clear intent of the Indiana General Assembly is to repeal IC 17-22-74 and IC 17-2-77 as of July 1, 1981 which is the effective date of P. L. 17. A statute may be repealed by express terms. Payne v. Buchanan, 150 N. E. 2d 250, 255 (Ind. 1958); Highland Sales Corp. v. Vance, 186 N. E 2d 682, 685 (Ind. 1962).

   c. The Indiana General Assembly clearly stated that the two statutes in question in this case "are repealed". No statutory interpretation is required. When clear

and unambiguous, a trial court must give the statute its plain, clear, or ordinary meaning McCabe v. Commissioner, Indiana Dept. of Ins., supra p. 3; Butler v. Indiana Dept. of Ins., supra p. 3. When a statute is clear and unambiguous, a court need only require that words and phrases of the statute be taken in their plain, ordinary, and usual sense. Basileh v. Alghusain, supra p 3; State v. American Family Voices, Inc., supra p 3; Gauvin v. State, supra p 3.

d. The definition of the transitive verb "repeal" in the Merriam Webster dictionary on the internet is "to rescind or annul by authoritative act especially to revoke or abrogate by legislative enactment". By the express action of the General Assembly, IC 17-2-44 and IC 17-2-77 were repealed. No statutory interpretation is required. Section 29(c) itself is the best evidence of legislative intent. State v. American Family Voices, Inc., supra p. 5; State v. Oddi–Smith, supra p. 5;. Grody v. State, supra p. *5.*

4. **Second, the express purpose of Section 30, P.L 17, Acts of 1981 was to define how the Lake County Council could exercise jurisdiction over IC 17-2-44 and IC 17-2-77 and to establish a deadline for the Lake County Council to act.**

a. Although Section 29(c) repealed the two subject sections as state statutes effective July 1, 1981, the Indiana General Assembly expressly stated in Section 30(a) that "Notwithstanding the repeal of a law by Section 29 of this Act, that law continues to apply, as if it was an ordinance of each affected city, town, or county until the affected unit or units exercise legislative power over the subject matter of the law". (Underline added; see page 341, Exhibit E).

b. In Section 30(b) and applying the general reference to an affected county specifically to Lake County, the Indiana General Assembly specifically defined the manner in which the Lake County Council had to act to exercise its jurisdiction over the subject statutes. Specifically, this would occur when the Lake County Council adopted an ordinance rejecting the provisions of the law and declaring the law no longer applicable to Lake County, or by adopting an ordinance substantially incorporating the provisions of the law in into the Lake County Code of Ordinances. (See Exhibit E**,** Section 30(b)(1) and (2), page 341).

c. The Indiana General Assembly in Section 30(c), P. L. 17, Acts of 1981 stated expressly that the provisions of Section 30 expired on September 1, 1983. In accordance with IC 1-1-5-10 an expiration of a statute is the same as the repeal of a statute. This meant that the Lake County Council had to exercise its legislative power and enact an ordinance in order to take advantage of the ability to exercise jurisdiction over IC 17-2-74 and IC 17-2-77 by virtue of IC 36-1-2.5-5 before July 1, 1983. The Lake County Council had to either reject the provisions of the subject two statutes or adopt an ordinance consistent with the subject two statutes on or before September 1, 1983. If no action was taken by

the Lake County Council by September 1, 1983, then the ability of the Lake County Council to act expired and is treated as a repeal of Section 30.

d. There was no evidence designated by the Lake County Council to support its motion for summary judgment that the Lake County Council had enacted an ordinance to adopt the two statutes sometime between July 1, 1981 (the effective date of the act) and September 1, 1983 (the drop-dead date in the act) as required by the Indiana General Assembly. The evidence submitted by the Lake County Council was that the two ordinances were adopted in 2020.

5. The combined effect of Section 29 and Section 30 was to repeal IC 36-1-3.5-5.

a. The purpose and intent of the Indiana General Assembly to repeal IC 36-1-3.5-5 is demonstrated by the combined effect of the express repeals of IC 17-2-44 and IC 17-2-77 in Section 29(c) and the express repeal language in Section 30(c.) After these two repeals there was no language remaining in IC 36-1-3.5-5 except language transferring the jurisdiction without any identification of the statutory area over which the Lake County Council had jurisdiction and how that jurisdiction was to be implemented. A statute may be repealed by either express terms or by implication. Highland v. Vance, supra p.9. Whether a statute is repealed is a matter of legislative intent. Peoples Trust & Savings Bank v. Hennessey, 153 N.E. 507 (1926); Monical v. Heise, 94 N.E. 232 (1911).

b. One statute may adopt another by specific and descriptive reference with the result that the adopted act is incorporated into the adopting act. State v. Board of Com'rs of Vanderburgh County, 94 N. E. 716, 717 (1911), State v. Doane, 311 N. E. 2d 803, 805 (1974), Mogilner v. Metropolitan Plan Commission of Marion County, 140 N. E. 2d 220, 224 (1957). This is how the Indiana General Assembly approached the drafting of IC 36-1-3.5-5. Both IC 17-2-44 and IC 17-2-77 were incorporated into IC 36-1-3.5-5 which then before their repeal had to be read as if the language in these two statutes was set out therein in verbatim fashion in IC 36-1-3.5-5.

c. After the repeal of the two statutes by Section 29(c) and the repeal of Section 30 on September 1, 1983, there was obviously a change in the language and format of IC 36-1-3.5-5. Since the statutes no longer existed by virtue of their repeal IC 36-1-3.5-5 would after repeal now read as follows:

> "Sec. 5. (a) This section applies to Lake County.
>
> Jurisdiction over the following local matters, which before the 1981 regular session of the Indiana General Assembly have been subjects of statutory concern, is transferred to the legislative body of the county:"

d. Because of the expiration of Section 30 which is equivalent to a repeal by statute, there was no longer any operative language directing what the Lake County Council could do. IC 36-1-3.5-5 identified nothing upon which it was to act because of the repeal of the statutes applying to Lake County by virtue of Section 29(c) and there was no method to act. In descriptive terms: "what remained was the transfer of jurisdiction to act on nothing that was identified in IC 36-1-3.5-5 and there was no instruction on how the Lake County Council was to act to exercise its jurisdiction over the nothing that was identified. " The object of IC 36-1-3.5-5 and how the object was to be implemented simply no longer existed. IC 36-1-3.5-5 no longer had a "direct object" or a "verb." The statute in effect had no operative language and was a nullity.

e. The result was that IC 36-1- 3.5-5 was repealed. Whether a statute is repealed is a question of legislative intent. Peoples Trust & Savings Bank v. Hennessey, id. , Monical v. Heise, id. An identification of any kind is sufficient. A statute may be repealed either by express terms or by implication. Payne v. Buchanan, 238 N.E. 2d 231, 28 (Ind. 1958) Highland Sales Corp. v. Vance, supra p. 9. The Indiana General Assembly in Section 29 expressly repealed effective July 1, 1981 both IC 17-2-44 and IC 17-2-7 and also expressly repealed Section 30 by establishing the expiration date of September 1, 1983. Clearly, the legislative intent was to repeal IC 36-1-3.5-5. The result was that there was no language in IC 36-1-3.5-5 to identify on what statutes the act was to exercise jurisdiction and no language on how that jurisdiction was to be implemented. Thus, the jurisdiction of the Lake County Council as the legislative body over the statutes in IC 36-1-3.5-5 was eliminated as of that date.

f. As is obvious when from reading the provisions of Sections 29 and 30, P. L 17, Acts of 1981 in Exhibit E, the Indiana General Assembly clearly and succinctly stated its purpose, how the law was to operate, and what was required by the Lake County Council in its legislative capacity. No statutory interpretation was required.

g. When the Indiana General Assembly took away the statutes on which the Lake County Council could act and eliminated the manner in which the Lake County Council could act, there was nothing left in IC 36-1-3.5-5. Clearly, by virtue of the provisions of Sections 29 (c), IC 17-2-44 and IC 17-2-77 were repealed on the effective date of the legislation which was July 1, 1981. These statutes then did not exist as state statutes but existed as if they were ordinances of Lake County. But the Lake County Council had to act prior to September 1, 1983 which was the date Section 30 expired. There was no IC 17-2-74 or IC 17-2-77 existing in this protected status after September 1, 1983. These two statutes simply did not exist. The action was just like using an eraser to remove a saying in chalk on a blackboard. The statute itself is the best evidence of legislative intent. State v. American Family Voices, Inc., supra p. 5; State v. Oddi–Smith, supra. p. 5; Grody v. State, supra p. 5.

h. The definition of the transitive verb “repeal” in the Merriam Webster dictionary on the internet is “to rescind or annul by authoritative act especially to revoke or abrogate by legislative enactment.” No statutory interpretation is required. The Indiana General Assembly by the express action of Section 29(c) expressly repealed IC 17-2-44 and IC 17-2-77 and by establishing the drop dead date of September 1, 1983 in Section 30(c) expressly repealed the ability of the Lake County Council to act after that date.

6. **<u>The action of the Indiana General Assembly in 1992 and 2012 to amend IC 36-1-3.5-5 to reflect population changes after the respective decennial census did not revive IC 36-1-3.5-5 because a repealed statute cannot be revived by an amendment to the statute.</u>**

a. The presence of IC 36-1-3.5-5 within the Indiana Code does not mean it is a valid statute. As previously suggested as 2019 the Indiana General Assembly inadvertently deleted portions of the veto statute when there was no intent to do so. Likewise, the oversight by the General Assembly to have IC 36-1-3.5-5 still on the books is another example of an oversight by the General Assembly.

b. After the decennial census in 1990 and 2010 the Indiana General Assembly enacted an amendment to adjust the parameter in IC 36-1-3.5-5 so that the statute would apply to Lake County. This was accomplished by an amendment though P.L.12-1992, Sec.C.144 and an amendment through P.L.119-2012, Sec. 171. The only thing that the amendments changed was to convert the qualifying parameter from the original “two or more second class cities” in 1981 to a population range in 1992 and finally in 2012 by using the specific term Lake County.

c. The transitive verb “amend” is to be taken in its plain and ordinary meaning , and usual sense. <u>Basileh v. Alghusain</u>, supra p 3; <u>State v. American Family Voices, Inc</u>., supra p 3; <u>Gauvin v. State,</u> supra p 3. The verb “amend” in the Meriam-Webster dictionary on the internet is defined as follows: “(1) to change or modify for the better (2) to alter especially in the wording especially (3) to alter formally by modification, deletion, or addition as to amend a statute or amend the complaint to cure defect.” The essential gravamen of a transitive verb is that there must be a direct object which is the something to act upon. You cannot amend something that does not exist. Thus, from the plain and ordinary meaning of the word to “amend something” that “something must be in existence”.

d. The drafters of the legislation to update the special legislation in IC 36-1-3.5-5 apparently did not consult P.L. 17, Acts of 1981 and thus were not aware that the statutes identified in Section 29 were repealed effective June 1, 1983. The reason is that the expiration date was in Section 30(c) which was a non-code section. Not recognizing that the statute was no longer in existence, the drafters erroneously adjusted the parameters in the various sections after the 1990 and

2010 decennial censuses by amending in each case IC 36-1-3.5-5 even though IC 17-2-74 and IC 17-2-77 were repealed as of September 1, 1983.

e. The fact that the action was an amendment to IC 36-1-3.5-5 in 1992 and 2012 is the key to understanding why that action did not revive the repealed statute. The following have been principles of the Indiana Supreme Court for over a hundred years:

(1) The repeal of a repealing act reinstates the repealed act. Lindsay v. Lindsay, 47 Ind 283, (no reporter cite available) (Ind. 1974), Baum v. Thomas, 50 N. E. 357. 360 (Ind. 1898), Haugh v. Smeiser, 66 N.E. 506, 507 (Ind. 1903). But, the Indiana General Assembly in 1992 and 2012 did not repeal either the language in Section 29(c) which repealed IC 17-2-44 or IC 17-2-77 or repeal Section 30(c) to reinstate the time for the Lake County Council to act. The Indiana General Assembly used an "amendment" not a repealing act nor did they reenact a new statute. The express language is that there was an amendment.

(2) In Indiana, the Supreme Court has clearly stated that in order to amend a statute there must be a statute in existence. The point is that the clear and ordinary meaning of the word "amend" as a transitive verb requires that there must be a direct object to amend. This court principle has been expressed in two ways:

(a) In Indiana, the courts have held that an amendment to a repealed statute does not revive the statute. A valid law cannot be enacted by amending an invalid or void law. Cowley v. Town of Rushville, no reporter cite available, 60 Ind. 327 (Ind. 1878). If something does not exist, it cannot be amended. The point being that the General Assembly can amend only something that exists. The transitive verb amends acts on a direct object. Without a direct object there can be no amendment. A valid law cannot be enacted by amending an invalid and void law. Cowley, id.

(b) Without something to amend, there is no revival without the existence of a statute or section to be amended. This often happens when a statue is amended by a subsequent statute, but the Indiana General Assembly then seeks to amend the original statute which was not in existence. Metsker. Whitesell, 103 N. E. 1078, 1084 (Ind. 1914) It has been held, consistently, by the Indiana Supreme Court that an amendatory act which purports to amend an act or section that has already been amended is void as an amendatory act because the act or section sought to be amended has no existence. Id.

(c) The legislation to amend in 1992 and 2012 is also void because a subsequent act purporting to amend it is also void. Cowley, id.; Copeland v. Town of Sheridan, 51 N. E. 47, 49 (Ind. 1898);

Heffelfinger v. City of Ft. Wayne, 149 N. E. 555, 556(1925); Milk Control Bd. V. Pursifull, 36 N. E. 2d 850, 851 (Ind. 1941),;Walsh v. State, 41 N. E. 65, 68, (Ind. 1895); Metsker v. Whitesell, 103 N. E. 1078, 1084 (Ind. 1914). This principle has been recognized for the attempt to revive a void law, an invalid law, or a law that does not exist, or a section of a law that has no existence.

(d) IC 17-2-44 and IC 17-2-77 were repealed by Section 29(c). A new statute would have to have been enacted after September 1, 1983 repealing Section 29(c) for IC 17-2-44 and IC 17-2-77 to be on the on the plate of the Lake County Council in 2020. The Indiana General Assembly did not reenact these two statutes by repealing Section 29(c). Thus, they did not exist in 2020

f. Section 29(c) which repealed IC 17-2-44 and IC 17-2-77 did not state when the appeal was to take effect. In Section 30 which instructed the Lake County Council on what to do the General Assembly specifically stated in Section 30(c) that the section expires on September 1, 1983. Since expiration is the same as a repeal, this section was repealed on that date. The repeal of IC 17-2-44 and IC 17-2-77 either took effect on the effective date of P.L 17 which was July1, 1981 or on the same date of September 1, 1983 in Section 30(c) which was September 1, 1983. The statutes were conceptually held in "limbo" and treated as ordinances of Lake County until the Lake County Council acted which it did not. So, the ability to act was the last step in closing out the existence of IC 17-2-44 and IC 17-2-77. Whether the date is July1, 1981 or September 1, 1983 is not critical to the current case. The point is that they both were repealed before the Lake County Council enacted the two ordinances in 2020.

g. Since IC 36-1-3.5-5 did not exist when the Lake County Council enacted the two ordinances, the only statutory authority available to the Lake County Council to enact both Ordinance No. 1451B and Ordinance No. 1451M are the provisions of the home rule statute.

(1) The key provision of the home rule statute is in IC 36-1-3-6(a) which states that "If there is a constitutional or statutory provision requiring a specific manner for exercising a power, a unit wanting to exercise the power must do so in that manner."

(2) There are two provisions of IC 36-2-3.5 that must be followed. These are the separation of powers principle in IC 36-2-3.5-2 and the power of the Lake County Commissioners in IC 36-2-3.5-4(b)(9) to negotiate contracts.

(3) The Lake County Council in the two ordinances simply did not abide by the home rule principles and the separation of powers in the language used in the two ordinances.

B. **<u>THIRD ARGUMENT: The Indiana General Assembly has since 1899 consistently and continuously held to the principle that in a unit of county government the same body cannot have the fiscal authority and the power to contract.</u>**

1. In 1899 the Indiana General Assembly enacted the County Reform Act, Acts of 1899. (Available through Indiana Legislative Services Agency)

2. Prior to the enactment of this legislation there was no county council. The county commissioners were the fiscal, legislative and executive body in a county from 1818 to 1899. This included the authority to contract.

3. During this period there were abuses because the fiscal authority was bundled with the power to contract in the county commissioners. So, the Indiana General Assembly responded in the County Reform Act of 1899, Acts of 1899, chapter 154 to sever this tie. A county council was created with fiscal authority.

4. But, the General Assembly did not give a county council the power to contract in the Acts of 1899. The sole reason why a county council was injected into the mix was to keep the authority to contract in a body separate from the body with the fiscal authority to set the budget and raise taxes.

5. In 1899 the Indiana General Assembly clearly thought it was a bad idea to give both the power to raise the money for the budget and the power to contract to spend the money raised to the same county body. There was too great an opportunity to abuse these two powers. So, they were separated. This principle was placed into the statutes of Indiana for county government.

6. After 1899 and up to 1980, the Indiana General Assembly did not change the organizational structure of Lake County Government. The Lake County Council was the county fiscal body and the Lake County Commissioners were its executive with the power to contract and were its legislative body with the power to enact ordinances.

7. In P.L.211 Acts of 1980 the Indiana General Assembly adopted the definition that made the Lake County Council the fiscal and the legislative body. Then, in IC 36-2-3.5-1 et seq. in 1981 the Indiana General Assembly formalized the structure and powers of the Lake County form of government. Consistent with its principle since the enactment of the County Reform Act of 1899, the Indiana General Assembly in IC 36-2-3.5-4(b)(9) kept the power to negotiate contracts with the Lake County Commissioners and did not transfer it to the Lake County Council. The principle is that the Indiana General Assembly considers existing laws when enact new laws. <u>McClarnon v. Stage</u>, 19 N. E. 2d 252, 254 (Ind 1939), <u>Morgan County Rural Elec. Membership Corp. v. Indianapolis Power & Light Co</u>., 302 N.E. 2d 776, 778 (Ind. App. 1973), <u>Hilligoss v. LaDow</u>, 368 N. E. 2d 1365, 1369 (Ind App. 1977). So, the Indiana General Assembly knew the principle that was injected by the Acts of

1899 and did not give the power to contract to the Lake County Council in 1981 but gave the power to negotiate contracts to the Lake County Commissioners in IC 36-2-3.5-4(b)(9).

8. The decision of the trial court returns Lake County government to a position that the Indiana General Assembly abolished in 1899. The trial court judgment gives the Lake County Council not only authority over the fiscal budgeting but the power to contract. This violates the specific intent of the 1899 County Reform Act which has been carried forward to this day.

9. Should the Court's prior ruling stand, it would create a circumstance where the county fiscal body can allocate funds for purchases and then approve those purchases. Lake County would be the only county in the State of Indiana which would give the fiscal body such overwhelming power.

C. FOURTH ARGUMENT: Since the enactment of IC 36-2-3.5-1 et. seq., the Indiana General Assembly has defined the legislative body to include the Lake County Board of Commissioners as the county executive when designating that the legislative body has the power to enter into agreements which demonstrates that the Indiana General Assembly knew of the authority of the Lake County Commissioners to negotiate contracts under IC 36-2-3.5-4(b)(9).

1. The Indiana General Assembly adopted in 1995 the guaranteed energy saving statute after the enactment of IC 36-2-3.5-1 et. seq in 1981. (Available on Indiana.gov) Therefore, if statutory interpretation were necessary, the Indiana General Assembly would be presumed to have considered IC 36-2-3.5-4(b)(9) and the Lake County Commissioners' power to negotiate contracts when adopting the guaranteed energy saving statute. McClarnon v. Stage, supra p. 14; Morgan County Rural Elec. Membership Corp. v. Indianapolis Power & Light Co., supra p. 14; Hilligoss v. LaDow, supra p. 14.

2. That the Indiana General Assembly considered that the Lake County Commissioners had the power to negotiate contracts in IC 36-2-3.5-4(b)(9) is evident from the following statutory language in the guaranteed energy savings statute:

    a. In IC 36-1-12.5-1.5 the Indiana General Assembly provided as follows:

        "As used in this chapter, "governing body" means the following: (5) With respect to other political subdivisions for any other project or program under this chapter, the legislative body (as defined in IC 36-1-2-9)". (underline added).

    b. In 36-1-2-9 the legislative body is defined as "(1) The board of County Commissioners, for a county not subject to IC 36-3-1."

IC 36-1-3-1 is the statute that defines a county that qualifies for Unigov for which only Marion County qualifies because of the first-class city status of Indianapolis. None of the other remaining 91 counties in Indiana qualifies for Unigov, and all of these including Lake County therefore do not meet the qualifications of IC 36-1-3-1. In all of these remaining 91 counties the County Commissioners are the County Executive.

c. In Lake County as the result of IC 36-2-3.5-3 the Lake County Council is legislative body. In IC 36-1-12.5(a) of the guaranteed energy saving statute the Indiana General Assembly defined the authority to contract as "The governing body may enter into an agreement …." In the other 89 counties other than Lake County and St. Joseph County the County Commissioners as the county executive have legislative authority so they were included when the Indiana General Assembly used the term "legislative body. The Lake County Commissioners were included because in recognition of IC 36-2-3.5-4(b)(9) the Indiana General Assembly defined governing body as any county that was not a Unigov county. But, in using the term legislative body as defined in IC 36-1-2-9 the Indiana General Assembly knowing the commissioner's authority to negotiate contracts defined legislative body to make the Lake County Commissioners the legislative body for purposes of the energy saving contract so that they would not contradict the grant to the Lake County Commissioners in IC 36-2-3.5-4(b)(9) of the power to negotiate contacts.

d. The above clearly demonstrates how the Indiana General Assembly is aware of the power of the Lake county commissioners to negotiate contracts and they defined the term legislative body in the guaranteed energy saving contract so as not to violate that statutory grant.

D. FIFTH ARGUMENT: The trial court decision violates Article 6, Section 10 of the Indiana Constitution by giving to the Lake County Council the authority to create a new form of local government for Lake County contrary to the form specifically established by the Indiana General Assembly for Lake County in IC 36-2-3.5-1 et. seq.

1. Article 6, Section 10 is as follows: "The Indiana General Assembly may confer upon the boards doing county business in the several counties, powers of a local, administrative character".

2. Should the Court's prior ruling stand, it would create a circumstance where the county fiscal body can allocate funds for purchases and then approve those purchases. Lake County would be the only county in the State of Indiana which would give the fiscal body such overwhelming power.

3. A county is a political division of the state created for specific government purposes. McDermott v. Board of Com'rs of Delaware County, 110 N.E. 37, 238 (Ind. App 1915), State v. Com'rs of Marion County, 85 N.E. 513 (Ind. 1908)

without the consent or concurrence of its inhabitants, but by the sovereign power of the state for governmental purposes.

4. The Indiana General Assembly never specifically enacted a statute giving the Lake County Council the authority to create a new form of government for Lake County which has the legislative and contract powers resting with the Lake County Council. The form created by the Indiana General Assembly has the contract powers allocated to the Lake County Commissioners as a result of IC 36-2-3.5-45(b)(9).

5. The trial court decision by giving the Lake County Council the power to contract and or to designate who can contract violates Article 6, Section 10 of the Indiana Constitution because there is no statute giving the Lake County Council the authority to change the explicit form of Lake County Government established by the Indiana General Assembly in IC 36-2-3.5-1 et seq.

E. WHAT MUST BE STRUCK FROM THE TWO ORDINANCES BECAUSE OF INVALIDITY IN VIOLATING THE SEPARATION OF POWERS PROVISION AND THE LAKE COUNTY COMMISSIONERS AUTHORITY TO NEGOTIATE CONTRACTS

1. Attached hereto as Exhibit H and Exhibit I are respectively Lake County Council Ordinance Number 1451 B and Lake County Council Ordinance 1451M.

2. Any provision of the two ordinances that is any manner restricts the statutory authority of the Lake County Commissioners over purchasing as authorized by IC 36-2-3.5- 4(b)(9), that violates the separation of powers provision of IC 36-2-3.5-2, or violates the authority of the Lake County Commissioners to establish the rules for the offices, departments, or agencies under its jurisdiction is invalid and the court must order them declared null and void and they must be stricken from the respective ordinance. The primary reasons are as follows:

   a. IC 17-3-74 and IC 17-3-77, the respective county data processing agency statute and the county purchasing agency statutes, have been repealed.

   b. IC 36-1-3.5-1 et seq. as applied to IC 36-1-3.5-5 has been repealed.

   c. IC 36-2-3.5-2 specifically provides for the separation of powers in the Lake County form of government.

   d. The Lake County Board of Commissioners have the sole authority under IC 36-2-3.5-4(b)(9) to negotiate contracts.

   e. The Lake County Board of Commissioners are the purchasing agency under IC 5-22.

f. The Lake County Commissioners establish the rules for all county departments, offices and agencies under its jurisdiction in accordance with IC 36-2-3.5-4(b)(4).

g. Any provision that permits the Lake County Council to exercise control over the independent jurisdiction of any official, agency, or department in the executive branch constitutes a violation of the separation of powers principle in IC 36-2-3.5-2

3. To assist the trial court there are appended as Exhibit 1 and Exhibit 2 to the motion to correct errors the respective statutes on which there is either a line or an "X" in some fashion to indicate which sections must be struck as invalid. To assist the trial court a summary to indicate what must be struck as invalid from each of the respective ordinances is identified and spelled out in the motion to correct errors.

4. The deletion of the language that violates the eight reasons listed in paragraph 2a-2g above leaves the respective two ordinances in a decimated position as they are really inoperative. This is the result of two factors: first, the Lake County Council in so many areas violated the statutory principles; and second, the presence of the severability clause prohibits the court from just finding that the two ordinances are in their entirety invalid. However, neither the trial court nor the Lake County Commissioners enacted the ordinances.

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CERTIFICATE OF SERVICE

I certify that on the 10th day of May 2021 I electronically filed the foregoing document and exhibits using the Indiana E-Filing System.

I hereby certify that on May 10, 2021 a copy of this memorandum in support of motion to correct errors and the exhibits were served electronically upon all of the attorneys of record via IEFS:

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