

REASONS SUPPORTING A VETO **OF ORDINANCE 1451M**

The Lake County Commissioners as the Lake County Executive pursuant to the veto power in IC 36-2-3.5-4(c)(2) and hereby **VETOES** Lake County Council Ordinance 1451M for the following reasons:

1. SUBSTANTIAL DEFECTS IN THE ORDINANCE

- A. The Lake County Council is attempting to gain purchasing power and the authority to approve any contract needed by the Lake County Data Processing Agency or the Lake County Data Processing Board.
- B. By giving sole power to the County Council to select and remove members of the Lake County Data Processing Board at its pleasure, this Ordinance in effect gives the Lake County Council 100% authority over the activities of an administrative agency by placing this agency with the legislative branch of government rather than the executive branch where the agency, by statute, must remain.

2. SOURCE OF POWERS OF THE RESPECTIVE BRANCHES

The powers of the Lake County Commissioners as the county executive and the Lake County Council as the county legislative body are expressly enumerated in IC 36-2-3.5-4 and IC 36-3-3.5-5, respectively.

3. THE LAKE COUNTY COMMISSIONERS HAVE THE SOLE EXPRESS POWER TO PURCHASE THROUGH CONTRACTS PURSUANT TO I.C. 5-22, *ET SEQ.* AND I.C. 36-2-3.5-4(b)(9)

- A. The purchase of all of the items identified in IC 5-22 is made thru a contract.
- B. The express provision in IC 36-2-3.5-4(b)(9), the county executive "shall negotiate contracts for the count." If there is a specific statute covering negotiating contracts that statute would apply.
- C. The word "shall" is *mandatory* and is a requirement.

4. FORMING A CONTRACT IS AN EXECUTIVE FUNCTION AND CANNOT BE PERFORMED BY THE LEGISLATIVE BODY IN LAKE COUNTY

- A. Ordinance 1451M attempts to transfer the power to negotiate contracts from the Lake County Commissioners to the Lake County Council as the legislative body under IC 36-2-3.5-3.
- B. In accordance with IC 36-2-3.5-2, a power belonging to the executive branch may not be exercised by the legislative branch.
- C. The exercise of power by one branch of Lake County Government which is specifically delineated to another branch of Lake County Government would violate the separation of powers.
- D. This power to negotiate contracts is expressly given to the Lake County Commissioners in IC 36-2-3.5-4(b)(9). Therefore, the Lake County Council cannot possess this power without violating the separation of powers.
- E. In the current ordinance and in the Ordinance 1451M, any reference to requiring approval of a contract for the Data Board of the agency by the Lake County Council or granting the Lake County Council

contract power violates IC 36-2-3.5-4(b)(9) and the provisions of IC 5-22-2-25 and other sections in that statute.

5. INCORPORATED HEREIN ARE THE REASONS IN THE ATTACHED EXHIBIT “A” WHY THE SUBSTANTIAL DEFECTS IN THE ORDINANCE WARRANT A VETO BASED UPON STATUTORY LAW AS ENACTED BY THE INDIANA GENERAL ASSEMBLY.

- A. Attached as Exhibit “A” and adopted as part of this veto are the reasons addressing the contracting and separation of powers issues.
- B. The reasons support the veto of Lake County Council Ordinance 1451M include those identical points and rationale that support the veto of the purchasing agency ordinance enacted as Ordinance 1451B by the Lake County Council.

6. THE ACTION BY THE COUNCIL IS NOT NEEDED SINCE THE LAKE COUNTY COMMISSIONERS HAVE ALREADY SELECTED THE LAKE COUNTY DATA PROCESSING BOARD AND THE AGENCY AS THE PURCHASING AGENCY FOR INFORMATION TECHNOLOGY (IT) SERVICES AND PRODUCTS FOR LAKE COUNTY

- A. The Lake County Commissions have long recognized the technical skill of the Lake County Data Processing Agency under the control of the Lake County Data Processing Board in the difficult area of information technology. This began when the Lake County Commissioners first established the Data Processing Agency and Board with their ordinance powers in 1969.
- B. The ordinance currently in effect and which the Lake County Council is attempting to repeal places the agency currently within the executive branch of county government as required by IC 6-2-3.5-2.
- C. In recognition of the expertise of the agency and its board as a branch of county government under the current ordinance, the Lake County Commissioners have already taken the following two actions to maximize the efficiency of the purchasing process in the area of IT services and products:
 - 1. At the start of the service by the current three commissioners as a board in 2017, the Commissioners contracted with the Lake County Data Processing agency provider, CENIFAX, and gave them the power to make purchasing decisions in this area. This was allowed by the provision of IC 5-22 permitting the Lake County Commissioners as the Lake County Purchasing agency to designate various purchasing agents. When the agency or the board wants to utilize the Lake County Commissioners as the purchasing agent, they simply place those acquisitions on the agenda of the commissioners, and they are competitively sought through the Commissioners purchasing power.
 - 2. Most recently when the Lake County Commissioners adopted their Purchasing Manual on July 15, 2020 the Lake County Data Processing Agency and Board were selected as a purchasing agent for this very technical and expertise agency. Attached as Exhibit “B” is a copy of this designation and the respective responsibilities.
 - 3. The Lake County Purchasing Manual has several unique features as outlined in the attached Exhibit “C”. Based upon these unique features and the designation of purchasing agents organized by specialty and expertise, the Indiana Association of Counties on behalf of the other 91 Indiana counties recently gave to Lake County its 2020 Achievement Award.
 - 4. The system embodied in the manual was perfected and developed starting in 2017 through the participation of all county offices, bodies, and departments including the Lake County

Council who were invited to and did participate in the development, drafting and adoption of the manual.

5. The role of the Lake County Data Board /Lake County Data Agency in contracting for IT services and products under IC 5-22 as they are the specialists in this area. The restriction on their ability is in place through the appropriation for this service.

7. FURTHER ANALYSIS

There may be other reasons supporting the veto, but these are those presently identified to support the veto by the Lake County Commissioners.

Enacted this 30th day of October 2020

Michael Repay, President

John Petalas, Lake County Auditor

Kyle W. Allen, Sr. Vice President

Jerry Tippy, Member

Attachments as Stated:

Exhibit "A" – Reasons Supporting a Veto of Ordinance 1451B

Exhibit "B" – Excerpt from Purchasing Manual pertaining to Lake County Data Processing Agency and Board

Exhibit "C" – Unique Features from Lake County Purchasing Manual