

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

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

1. 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 respectively in IC 36-2-3.5-4 and IC 36-3-3.5-5.

2. THE LAKE COUNTY COMMISSIONERS UNDER THE STATUTE CREATING THE SPECIFIC FORM OF COUNTY GOVERNMENT IN LAKE COUNTY HAVE THE SOLE EXPRESS POWER TO PURCHASE THROUGH CONTRACTS AS WELL AS TO SUPERVISE COUNTY ADMINISTRATIVE OFFICES

- 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) is that the executive “shall negotiate contracts for the county”.
- C. IC 36-2-3.5-4(b)(11) gives explicit authority for the executive to “supervise county administrative offices *except* for the offices of the elected officials.
- D. The word “shall” is *mandatory* and is a requirement.

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

- A. The ordinance attempts to transfer the power to negotiate contracts 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. A power which belongs to one branch of the Lake County Government cannot be exercised by the other branch.
- D. This power to negotiate contracts is expressly given to the Lake County Commissioners in the executive branch, and therefore the Lake County Council cannot possess this power since it is in the legislative branch.

4. SUPERVISING COUNTY ADMINISTRATIVE OFFICES IS EXCLUSIVELY AN EXECUTIVE FUNCTION

- A. The ordinance attempts to transfer the power to supervise a county administrative office 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. A power which belongs to one branch of the Lake County Government cannot be exercised by the other branch.
- D. This power to supervise a county administrative office rests solely with Lake County Commissioners in the executive branch, and therefore the Lake County Council cannot possess this power without violating separation of powers.

5. COUNTY COUNCILS WERE ESTABLISHED FOR A PARTICULAR PURPOSE WHICH WAS TO SEPARATE THE POWER TO CONTRACT AND THE POWER TO EXERCISE THE FISCAL AUTHORITY

- A. From 1816 to 1899 the Lake County Commissioners were the county executive, county legislative body, and the county fiscal body.
- B. In 1899 in the County Reform Act the Indiana General Assembly created a county council at the county level so that the ability to establish the budget as the fiscal body would not in the same body that can negotiate contracts for the county.
- C. The reason why this was enacted was because there was abuse when the power to contract was united with the fiscal authority of a county.
- D. The General Assembly was aware of this policy when it enacted IC 36-2-3.5-2 and 4 and IC 36-2-3.5-5 and thereby followed this policy in giving the Lake County Commissioners the exclusive power to negotiate contracts.

6. THE LAKE COUNTY COUNCIL HAS NO HOME RULE POWER TO DETERMINE HOW THE AUTHORITY TO NEGOTIATE CONTRACTS IS ACCOMPLISHED AT THE LOCAL COUNTY LEVEL IN LAKE COUNTY GOVERNMENT.

- A. With the enactment of the home rule statute in the 1980 Session, 91 of 92 counties (Marion County under its special Unigov statute) had the power by ordinance to determine what body at the local county level would have the power to negotiate contracts.
- B. The special Lake County and St. Joseph County form of government did not come into existence until the 1981 session of the General Assembly.
- C. So, at the end of the 1980 Session the Board of Lake County Commissioners still had the legislative powers to enact ordinances.

- D. The intent of the home rule statute after the 1980 Session and before the change to Lake County and St. Joseph County in the 1981 Session was that with the authority to use home rule the Lake County Commissioners as well as the County Commissioners in the other 90 counties other than Marion County could enact a statute giving to the Board of Commissioners the authority to negotiate contracts. Under the home rule doctrine enacted in 1980, this left the local determination to the county commissioners in those 91 counties who had the legislative power under home rule to enact an ordinance identifying who would be given the contract power.
- E. Since there was no specific statute giving to anybody the contracting authority, the Lake County Commissioners immediately after the 1980 Session could under home rule have given that power to contract another office or they could have assigned that power to themselves. However, the Lake County Commissioners could not in 1980 have given the power to the Lake County Council based upon the principle established in the 1899 County Reform legislation.
- F. If there is a specific statute covering negotiating contracts that statute would apply under home rule. In the 1981 Session the General assembly enacted IC 36-2-3.5-4(b)(9) giving the Lake County Commissioners the express and sole authority to negotiate contracts. The specific statute was then in place.
- G. Therefore, since there was now a specific statute giving this contract authority to the Lake County Commissioners, there was no longer any authority under the home rule statute for the Lake County Council as the newly created legislative body to take any action. The home rule statute stated specifically that if there is "a statutory provision requiring a specific manner for exercising a power, a unit wanting to exercise the power must do so in that manner". IC 36-1-3-6(a). The controlling statute now is IC 36-2-3.5-4(b)(9).

7. THE LAKE COUNTY COMMISSIONERS UNDER SPECIFIC STATUTORY AUTHORITY FROM THE INDIANA GENERAL ASSEMBLY ESTABLISHED CENTRALIZED PURCHASING IN LAKE COUNTY IN 1982 AND 1997 THEREBY NEGATING THE AUTHORITY OF THE LAKE COUNTY COUNCIL TO ESTABLISH CENTRALIZED PURCHASING AS A DEPARTMENT

- A. IC 36-2-3.5-1 et. seq. and IC 36-1-3.5-5 were both enacted in the 1981 Session of the Indiana General Assembly.
- B. Under IC 36-2-3.5-4(c)(3) the Commissioners as the County Executive "may establish and administer centralized budgeting, centralized personnel selection, and centralized purchasing".
- C. On September 7, 1982 by a vote of 3-0 the Lake County Commissioners did establish and administer centralized personnel selection and centralized purchasing in accordance with IC 36-2-3.5-4 (c)(3).
- D. This action of September 7, 1982 negated the ability of the Lake County Council to do anything under their power to establish a department of centralized purchasing.

- E. On October 22, 1997, the Commissioners reaffirmed the establishment of centralized purchasing in Order Number 84.
- F. The official action of the Commissioners established centralized purchasing and there is no other statutory authority for the Lake County Council to repeal this established purchasing department and establish a separate department.
- G. The Lake County Council has officially recognized and ratified the establishment of the centralized purchasing agency by the Lake County Commissioners on September 7, 1982 by incorporating in the Lake County Indiana Code of Ordinances as Title III, Chapter 30, Board of Commissioners, Section 30.04 the act on September 7, 1982 that the Board of Commissioners does establish and administer centralized purchasing in accordance with IC 36-2-3.5-4(c)(3).

8. THE ATTEMPTED TRANSFER OF THE PURCHASING POWER TO THE LAKE COUNTY COUNCIL WOULD VIOLATE THE PRINCIPLE UNDER WHICH THE INDIANA GENERAL ASSEMBLY ESTABLISHED COUNTY COUNCILS IN 1899

- A. From 1816 to 1899, the Lake County Commissioners were the county executive, the county legislative body and the county fiscal body.
- B. Abuse occurred in some counties when county commissioners would budget monies annually, and then award contracts to parties selected by the commissioners.
- C. In 1899 the Indiana General Assembly in the County Reform Law, approved on March 3, 1899 (Acts 1899, p. 343, c. 154) created the county council as the fiscal body.
- D. The principle recognized in this legislation is that there should never be a unification of the fiscal power with the power to negotiate contracts for county government. Hence, two separate bodies were created to handle each of these functions.
- E. Giving contract authority to the Lake County Council which has the fiscal authority would create the identical problem and situation that the Reform Law of 1899 was designed to correct.
- F. The Indiana General Assembly was aware of this dilemma when it enacted IC 36-2-3.5-4(b)(9) and IC 36-3.5-3.

9. SINCE THE LAKE COUNTY COUNCIL DID NOT HAVE THE HOME RULE AUTHORITY TO DESIGNATE WHO HAD THE POWER TO NEGOTIATE CONTRACTS, A STRAIGHT FORWARD READING OF ALL SIX SECTIONS IN IC 36-1-3.5 THAT APPLY ONLY TO COUNTY GOVERNMENT CLEARLY DEMONSTRATES THE INTENT OF THE GENERAL ASSEMBLY WAS NOT TO TRANSFER THE POWER TO CONTRACT BUT TO PERMIT THE CREATION OF A DEPARTMENT OR AGENCY WITHIN THE EXECUTIVE BRANCH OF THE ELEVEN LARGEST NON UNIGOV COUNTIES IN INDIANA

- A. There are six sections in IC 36-1-3.5 that have the same language which reads in part: "Jurisdiction over the following local mattersis transferred".
- B. Since the Lake County Council does not have home rule power to determine by ordinance who had the power to negotiate contracts, the key is to discover what the intent was in the passage of IC 36-1-3.5 in the 1981 Session.
- C. The language operates in the following manner on only the following eleven counties:
 1. Jurisdiction is transferred in IC 36-1-3.5-5(b)(3) to the Lake County Council as the Lake County legislative body.
 2. Jurisdiction is transferred in IC 36-1-3.5-6(b)(2) to the Allen County Board of Commissioners as the Allen County Executive.
 3. Jurisdiction is transferred in IC 36-1-3.5-7(b)(1) to the St. Joseph County Council as the St. Joseph County legislative body.
 4. Jurisdiction is transferred in IC 36-1-3.5-8(b)(1) to the Vanderburgh County Board of Commissioners as the Vanderburgh County executive.
 5. Jurisdiction is transferred in IC 36-1-3.5-9(b)(1) to the Board of Commissioners of Elkhart County, Madison County, Tippecanoe County, Delaware County, LaPorte County, and Vigo as the county executives in these 6 counties.
 6. Jurisdiction is transferred in IC 36-1-3.5-10(b)(2) to the Porter County Board of Commissioners as the Porter County Executive Body.
- D. The same language in the aforementioned six sub sections is identical and must transfer the same jurisdiction in all eleven counties.
- E. The transfer of jurisdiction cannot reference and did not include the transfer of the power to negotiate contracts for the following reasons:
 1. In nine of the above counties excluding Lake County and St. Joseph County, the Board of County Commissioners as the executive body in that county already had the power by ordinance to determine under home rule who had the power to contract. They simply had to enact an ordinance giving this power to themselves.
 2. In the case of Lake and St. Joseph Counties, there was no need to enact an ordinance since the power to negotiate contracts was expressly given to the Lake County Board of commissioners and the St. Joseph County Board of Commissioners by IC 36-2-3.5-4(b)(9). No home rule action is necessary.
 3. The Lake County Council has no home rule power because the General Assembly has already given an express grant of the authority to negotiate a contract to the Lake County Board of Commissioners. IC 36-1-3-6(a)

4. So, there was no need to transfer the power to negotiate contracts in these nine counties since they already had the power by ordinance under home rule to determine who would have the power to negotiate contracts.
5. Lake County and St. Joseph County in IC 36-2-3.5-4(9) already had the mandatory power to negotiate contracts since the General Assembly used the word “shall”, so there was no need for an ordinance to do anything to give Lake County that power.
6. The only import of the above series of clauses in IC 36-1-3.5 was to permit the creation of a county purchasing agency within the executive branch of county government.
 - a. Because of the separation of powers principle and the principle established when the General Assembly created “county councils” in 1899, the county purchasing agency could not be in the fiscal body because that would violate these two statutory stalwarts.
 - b. Since the fiscal body in Lake County is the Lake County Council, the purchasing agency could not be created under the control of the Lake County Council.
 - c. The language was not included in IC 36-1-3.5-6, 8, 9, 10 without there being an intended purpose. The statute referenced was IC 17-2-77 which applied to all of Indiana’s 92 counties.
 - d. Excluding Marion County which had a Unigov form of government merging city and county functions, the eleven counties identified in IC 36-1-3.5 are the eleven largest Indiana counties with a population over 100,000 people in 1980.
 - e. The reason that the word “transfer” was used in IC 36-1-3.5 is that the power to establish a county purchasing agency as an agency was “moved” from IC 17-2-77 to only these eleven Indiana counties and not to the 80 other counties.
 - f. In the nine counties other than Lake County and St. Joseph County the Board of County Commissioners or county executive could establish a County Purchasing Agency as a department within the executive branch through the use of its ordinance powers.
 - g. Recognizing that in Lake County and St. Joseph County the Board of County Commissioners did not have the legislative power to create a county purchasing agency by ordinance but desiring not to discriminate in the legislation, the General Assembly gave the county executive in the Lake County and St. Joseph County the discretionary power to establish centralized purchasing through the use of IC 36-2-3.5-4(c)(3) by stating that the Board of Lake County Commissioners as “The executive may:(c) establish and administercentralize purchasing”.
 - h. This meant that the county executive in all eleven of the counties could establish a county purchasing agency if they took the steps to do so.

- i. The Board of Lake County Commissioners did “establish and administer centralized purchasing” on September 7, 1982 and reaffirmed this action on October 22, 1997.
- j. The General Assembly transferred the identical jurisdiction to the Lake County Council in IC 36-1-3.5-5(b) to establish a county purchasing department by using the same words and phrases the General Assembly used to transfer the identical jurisdiction to Allen County, Vanderburgh County, Elkhart County, Madison County, Tippecanoe County, Delaware County, LaPorte County, Vigo County, and Porter County.
- k. This was the jurisdiction to use the legislative power of the Lake County Council in IC 36-2-3.5-5(b)(6) to establish a department as the purchasing agency in the executive branch with the power to negotiate contracts belonging to the Lake County Commissioners. This statute does not give the Lake County Council the authority to move, transfer or establish its own purchasing department because the County Council cannot contract on behalf of the county.
- l. However, the Lake County Council has never done this, has not done so with Ordinance 1451B, and is precluded from doing this with the action of the Lake County Commissioners on September 7, 1982 and October 22, 1997.
- m. The Lake County Commissioners with the power to negotiate contracts under IC 36-2-3.5-4(b)(9) has already implemented the power to “establish and administercentralized purchasing” through IC 36-2-3.5-4(c)(3).

10. 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