



# Office of the Lake County Sheriff

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***Sheriff Roy Dominguez***

**September 23, 2010**

**Lake County Commissioners**  
2293 N. Main Street  
Crown Point, IN 46307

*(Via: Hand Delivery & Email)*

Re: Winfield Interlocal Agreement – \$100,000 Interim Payment for Police Services

Dear Commissioners,

On September 13, 2010, I forwarded you a copy of my letter to the Town of Winfield concerning their repeated failure to pay the sum of \$100,000 to the Lake County general that was due in January of 2010 for police services provided by the Lake County Sheriff's Department. In my letter I also advised the Town that unless the \$100,000 payment was received on or before noon on October 1, 2010, all police patrols and other law enforcement services provided by the Lake County Sheriff's Department in the Town of Winfield, that have been subsidized by county taxpayers since 1993, would cease. (see Winfield letter attached).

Following my notice to the Town of Winfield, I was advised that Commissioner Scheub and Councilman Blanchard had conferred with representatives of the Town of Winfield and forwarded a letter to the Town on September 21, 2010 advising:

"The Lake County Sheriff is duty bound to provide police protection. This protection can not be withdrawn on October 1, 2010."

As you know, negotiations with the Town of Winfield have been ongoing on this issue since 2008. In the fall of 2009, town officials promised to: 1) pay \$100,000 to the County by January of 2010 to partially offset the costs to the Sheriff's Department for patrolling 24/7 in Winfield; and 2) move forward to appoint a town marshal or create a police department in 2010 as required by Indiana law. To date, Town officials have failed and refused to make the \$100,000 payment and have failed to appoint a town marshal as required under Indiana law.

Attached hereto please find a copy of a legal opinion that I requested from the Sheriff's Attorney which confirms that under Indiana law:

- a) The board of Commissioners has no authority whatsoever to direct the duties or responsibilities of a county sheriff or any of his/her deputies.
- b) Indiana law mandates the Town of Winfield must appoint a town marshal or, in the alternative, abolish the position of town marshal and establish a police department.

- c) The Town of Winfield is in direct violation of Indiana law by refusing to appoint a town marshal or abolish the office of town marshal and create a police department.

Since being incorporated in 1993, the Town of Winfield has refused to appoint a town marshal or form a police department to enforce its local ordinances and traffic laws. The Department of Justice, Bureau of Justice Statistics notes that expenditures for operation of a Sheriff's Department in FY 2003 averaged \$124,400 per sworn police officer or \$82.00 per resident.

The Town of Winfield brags on its webpage that Winfield's: "*municipal tax rate is the lowest in Lake County and makes the cost of living here very attractive.*" (<http://www.winfieldgov.com>). Winfield's failure to appoint a town marshal or form a police department has caused a strain on the manpower and resources of the county police force and has resulted in county taxpayers living outside Winfield subsidizing basic law enforcement services for the Town. No wonder Winfield can brag about a low tax rate – they refuse to pay even for the basic police services they are mandated by law to provide their residents.

As the Commissioner's Attorney John Dull stated in his memo to the Winfield Town Council in March of 2010, "Show Me The Money!" Lake County Taxpayers have subsidized police services in Winfield for the last 17 years - this subsidy has to end especially when I am advised by the county council that the Sheriff's Department will have to lay-off over 30 police officers due to the current budget crisis.

Therefore, and contrary to the representations made by Commissioner Scheub and Councilman Blanchard in their letter, this is to advise I am firm in my commitment that **all patrols in the Town of Winfield will cease on October 1, 2010, if the Town of Winfield fails to make their \$100,000 to the county general fund on or before said date.**

Respectfully Submitted,



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Rogelio Dominguez,  
Sheriff of Lake County

cc: Lake County Council  
John S. Dull, Commissioner's Attorney  
John M. Kopack, Sheriff's Attorney  
Marco Kuyachich, Chief of Police  
Tony Ramirez, Commander Patrol



# Office of the Lake County Sheriff

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***Sheriff Roy Dominguez***

**September 13, 2010**

Winfield Town Council  
10645 Randolph Street  
Winfield, IN 46307

*(Via: Hand Delivery & Email)*

Re: Interlocal Agreement – \$100,000 Interim Payment for Police Services

Dear Council Members,

On October 28, 2008, a letter was forwarded to the Town of Winfield advising:

- 1) State law requires each town in Indiana to either appoint a Town Marshal or, in the alternative, abolish the position of Town Marshal and establish a police department by forming a board of metropolitan police commissioners.
- 2) Since being incorporated in 1993, the Town of Winfield has not appointed a Town Marshal or formed a police department to enforce its local ordinances and traffic laws.
- 3) The responsibility and related costs for the enforcement of local ordinances and traffic laws clearly falls within the jurisdiction of Town of Winfield and not the Lake County Police Department. The failure of the town to appoint a town marshal or form a police department has caused a strain on the manpower and financial resources of the county police force, resulting in county taxpayers subsidizing the cost of basic law enforcement services for the Town of Winfield.
- 4) Due to the recent tax freeze imposed by the Indiana Legislature, and the budgetary restraints forced upon Lake County by this legislative action, the county police force has reached a point where it will be cost prohibitive to continue providing law enforcement services in the Town of Winfield that should be provided by your own town marshal or police department under Indiana law." (See letter attached as Exhibit "A").

Based upon a 2006 Department of Justice, Bureau of Justice Statistics report, that expenditures for operation of a Sheriff's Department in FY 2003 averaged \$124,400 per sworn police officer or \$82.00 per resident (<http://www.ojp.usdoj.gov/bjs/pub/pdf/so03.pdf>), a draft of an interlocal agreement was prepared by Commissioner's Attorney John Dull and Sheriff's Attorney John Kopack. After consultation with Town Attorney William Enslin, a final draft of the proposed Agreement was forwarded to Mr. Enslin in April of 2009, for approval by the Winfield Town Council. The Agreement provided that the Lake County Sheriff's Department would continue to provide 24/7 police protection and patrols in the Town of Winfield, 365 days per year, for an annual payment of \$350,000. (See attached Exhibit "B").

Following your receipt of the final draft of the Interlocal Agreement, several months went by without any action by the Winfield Town Council. In August of 2009, Mr. Enslin advised representatives of the Town Council would like to meet and confer regarding the Interlocal Agreement and a meeting was scheduled for September 9, 2009, at my office.

On September 9, 2009, Winfield's Council President, Clerk-Treasurer and town attorney met with me, Sheriff's Attorney John Kopack and Commissioner's attorney John Dull to discuss the status of the Interlocal Agreement. During this meeting the Council President and Clerk-Treasurer advised that Winfield only had \$100,000 budgeted for police protection in 2010, and would be moving to establish a town marshal system in 2010. Per the suggestion of Commissioner's Attorney John Dull, the Council President agreed that Winfield would pay the \$100,000 budgeted for police protection to the Lake County General Fund in January of 2010 as a gesture of good faith and to offset at least some of the costs incurred by county taxpayers to provide police services in the Town of Winfield.

In January and February of 2010, the Lake County Sheriff's Department continued to provide police services in the Town of Winfield, however, Winfield failed to remit the promised \$100,000 payment for police protection to Lake County General Fund. In March of 2010, Commissioner's Attorney John Dull was advised by your town attorney that it appeared Winfield would not be making the \$100,000 payment as promised. On March 19, 2010, you received a memo from John Dull advising:

"Show Me The Money!

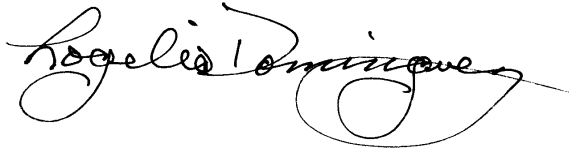
"Hopefully you have adopted an ordinance to get your own police protection. You have been negotiating with the County for a year and a half with a promise of an interlocal agreement. My last information was that you are not giving us the \$100,000 that you lead us to believe you were. So I believe we need to stop police protection on April 1, 2010. The taxpayers from unincorporated lake County have been subsidizing the Town of Winfield for too long." (See attached Exhibit "C").

After receiving notice from the Commissioner's Attorney that all police services should cease on April 1, 2010, a form of resolution was forwarded to your town attorney on March 24, 2010, for approval of the \$100,000 payment to the County General Fund. (See attached Exhibit "D"). Since said date, the Town of Winfield has failed and refused to pay for the police services being rendered to the citizens of your community.

Therefore, this is to advise that unless the \$100,000 payment promised to the Lake County General Fund is received on or before noon on Friday, October 1, 2010, all police patrols and other law enforcement services provided by the Lake County Sheriff's Department, and subsidized by the taxpayers of Lake County, within the Town of Winfield will cease immediately.

It is unfortunate that this action has to be taken, however, Lake County Taxpayers have subsidized police services in your town for the last 17 years and such a subsidy cannot be justified in any manner when the Lake County Council advises that the Sheriff's Department will have to cut over 30 police officers due to the current budget crisis.

Respectfully Submitted,



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Rogelio Dominguez,  
Sheriff of Lake County

cc: Clerk-Treasurer, Town of Winfield  
William T. Enslin, Winfield Town Attorney  
Lake County Commissioners  
Lake County Council  
John S. Dull, Commissioner's Attorney  
John M. Kopack, Sheriff's Attorney  
Marco Kuyachich, Chief of Police  
Tony Ramirez, Commander Patrol



## THE BOARD OF COMMISSIONERS OF THE COUNTY OF LAKE



2298 North Main Street  
Crown Point, Indiana 46307

Office: (219) 755-3200  
Home: (219) 322-4139  
Fax: (219) 755-3064

GERRY J. SCHEUB, Second District

September 21, 2010

RE: Winfield Police

Dear Winfield Residents:

As your Commissioner and Councilman Blanchard, this is a way to resolve your short and long range police coverage.

Your Town must have its own police coverage. This can be provided either through a town Police Force or a Town Marshall. The last way would be an interlocal agreement with Lake County to have that service provided by the Sheriff of Lake County.

The Lake County Sheriff is duty bound to provide police protection. This protection can not be withdrawn on October 1, 2010. However, as a town, Winfield is obligated to do something to provide its own coverage in the future. The three ways to do it are listed in the above paragraph.

No one wants to hinder the effort of the Town of Winfield. I will support an interlocal agreement under the following guidelines:

1. The agreement would take effect as soon as it is executed by the Winfield Town Board, the Lake County Council, and the Lake County Board of Commissioners;
2. The agreement could take effect in 2010. I stand ready to put an agreement on the Commissioners agenda at our meeting on October 20, 2010;
3. If the agreement goes into effect in 2010, I would not require any payment for services already rendered or to be rendered under the agreement in 2010. The Town of Winfield would be given a "pass" but the carrot is there. The "pass" will occur only if the interlocal agreement is in force and executed in 2010;
4. The Town must agree to hold harmless Lake County if the County were sued by virtue of Lake County Sheriff taking over the law enforcement duties within the geographical boundaries of the Town of Winfield. The County would not require an insurance policy but would simply require that the Town of Winfield defend the County, its officers, and its employees and pay any judgments emanating from the law enforcement activity;

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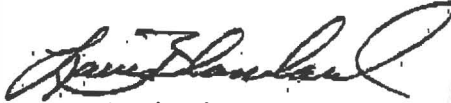
5. I would support the payment of a \$100,000 fee by Winfield to Lake County for service commencing January 1, 2011. This would be an annual fee.

As your Commissioner and Councilman, we are at your service and will assist where ever we can.

Sincerely,



Gerry J. Scheub  
2<sup>nd</sup> District Commissioner



Larry Blanchard  
7<sup>th</sup> District Councilman

John M. Kopack

Amy R. Bolen, *of counsel*

9111 Broadway, Suite GG

P.O. Box 10607

Merrillville, IN 46411

Tx: (219) 738-2978

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September 23, 2010

Rogelio Dominguez  
Sheriff of Lake County  
2293 N. Main Street  
Crown Point, IN 46307

Re: Request for Legal Opinions

Dear Sheriff,

You recently requested my legal opinion on two separate issues:

- 1) Does a Board of County Commissioners have any authority over the duties of a County Sheriff or his/her Deputies?
- 2) Is the Winfield Town Council acting in derogation of state law by failing to appoint a Town Marshal?

Based upon my research and analysis of the relevant state statutes and case law, my legal opinion on each of the above issues follows.

**1) Does a Board of County Commissioners have any authority over the duties of a County Sheriff or his/her Deputies?**

The duties and responsibilities of a county sheriff are established and defined by the Indiana Legislature in Ind. Code § 36-2-13-5, which provides as follows:

(a) The sheriff shall:

- (1) arrest without process persons who commit an offense within the sheriff's view, take them before a court of the county having jurisdiction, and detain them in custody until the cause of the arrest has been investigated;
- (2) suppress breaches of the peace, calling the power of the county to the sheriff's aid if necessary;
- (3) pursue and jail felons;
- (4) execute all process directed to the sheriff by legal authority;
- (5) serve all process directed to the sheriff from a court or the county executive;
- (6) attend and preserve order in all courts of the county;
- (7) take care of the county jail and the prisoners there;
- (8) take photographs, fingerprints, and other identification data as the sheriff shall prescribe of persons taken into custody for felonies or misdemeanors; and



(9) on or before January 31 and June 30 of each year, provide to the department of correction the average daily cost of incarcerating a prisoner in the county jail as determined under the methodology developed by the department of correction under IC 11-10-13.

(b) A person who:

- (1) refuses to be photographed;
- (2) refuses to be fingerprinted;
- (3) withholds information; or
- (4) gives false information;

as prescribed in subsection (a)(8), commits a Class C misdemeanor.

The question of whether county commissioners have authority or supervision over a county sheriff and his/her deputies has been the subject of numerous opinions by both the Indiana and Federal Courts. The case law in both jurisdictions has repeatedly held that county commissioners in Indiana have no power or authority over a sheriff or his deputies.

"The county commissioners, and, accordingly, the county, does not have any control over the acts of the sheriff. The sheriff is an office created by Article 6, § 2 of the Indiana Constitution and the powers and duties of the office are established by the Legislature. See, e.g., Ind. Code Ann. § 36-2-13-5 (Burns Supp. 1986). Although the county commissioners have limited emergency powers relating to the appointment of extra deputies, those powers do not relate to the ability to control the acts performed by any deputy or, indeed, by the sheriff. See Ind. Code Ann. § 36-8-10-6(b) (Burns 1981)." **Delk v. Board of Comm'rs**, 503 N.E.2d 436, 440 (Ind. Ct. App. 1987).

"The Court of Appeals in its opinion correctly holds that the county commissioners of neither county had control over the actions of the sheriff. . ." citing Delk v. Bd. of Com'rs of Delaware County (1987), Ind. App., 503 N.E.2d 436." **Radcliff v. County of Harrison**, 627 N.E.2d 1305, 1306 (Ind. 1994)

"Under Indiana constitutional, statutory, and case law, county commissioners, and, accordingly, Indiana counties, do not control the acts of county sheriffs. **Delk v. Board of Com'rs of Delaware County**, 503 N.E.2d 436, 440 (Ind. Ct. App. 1987). Article 6, Section 2 of the Indiana Constitution establishes the office of the county sheriff, and the legislature determines its powers and duties. See Ind. Code 36-2-13-5. Although county commissioners have some emergency powers relating to county sheriffs, "those powers do not relate to the ability to control the acts performed by any deputy or, indeed, by the sheriff." **Oswalt v. Grant County**, 2010 U.S. Dist. LEXIS 10857, 40-41 (N.D. Ind. Feb. 8, 2010).

"a deputy sheriff is an employee rather than a public officer. Unlike the sheriff, who is elected by the residents of the county, Ind. Const. Art. VI, sec. 2, a deputy sheriff's relationship to the county is contractual. Indiana Code section 36-8-10-4(a) provides that "[a] county police force is established in each county. The members are employees of the county, and the sheriff of the county shall assign their duties according to law." The county fiscal body determines the number of full-time or part-time deputies who may be appointed by the sheriff, Ind. Code § 36-2-16-4, as well as the amount of compensation for sheriff's deputies, Ind. Code § 36-8-10-4(c). Deputy sheriffs are appointed by the sheriff and are subject to the control and supervision of the sheriff. A deputy so appointed "may perform all the official duties of the officer who appointed him . . ." Ind. Code § 36-2-16-3(a). Indiana Code section 36-2-13-5 describes the official duties of the sheriff. Indiana Code section 36-8-10-9 mirrors those duties in describing the duties of a member of the sheriff's department. Although section 36-8-10-9 describes the duties of members of the sheriff's department, it does not create the duties. It is the county fiscal body and

the sheriff in authorizing and appointing a deputy that creates the duties, and that is a matter of contract. Deputy sheriffs have duties imposed by contract and are subject to the supervision and control of the sheriff in hiring, assignment of duties, and discipline or dismissal, in contrast to the common "definition" of a public officer as one with duties imposed by law and powers of supervision and control. See Gaskin, 622 N.E.2d at 528." *Thompson v. Hays*, 867 N.E.2d 654, 658-659 (Ind. Ct. App. 2007).

Thus, based upon the salient statute and the decisions by the Indiana Supreme Court, Indiana Court of Appeals and U.S. District Court for the Northern District of Indiana, it is my legal opinion that a board of county commissioners has no authority whatsoever to direct the duties or responsibilities of a county sheriff or any of his/her deputies.

**2) Is the Winfield Town Council acting in derogation of state law by failing to appoint a Town Marshal?**

The Town of Winfield was incorporated in 1993. In 2008, the Town of Winfield had an estimated population of 4,209 covering 2.3 square miles. Prior to 1993, this area fell under the jurisdiction of the Lake County Sheriff's Department as an unincorporated area of Lake County. The statutes and case law that are relevant to police services in an incorporated town such as Winfield, are as follows:

a) Town Marshal:

I.C. 36-5-7-1:

This chapter applies to all towns that have not abolished the office of town marshal.

I.C. 36-5-7-2:

The town legislative body shall appoint a town marshal and fix his compensation.

I.C. 36-8-9-2:

The legislative body of a town may by ordinance:

- (1) abolish the office of town marshal; and
- (2) establish a board of metropolitan police commissioners (referred to as "the board" in this chapter).

b) Indiana Case Law:

In *Olejniczak v. Town of Kouts*, 651 N.E.2d 1197, 1199 (Ind. Ct. App. 1995) the Indiana Court of Appeals held that I.C. 36-5-7-1 "applies to all towns that have not abolished the office of town marshal" and under I.C. 36-5-7-2 "the town legislative body shall appoint a town marshal and fix his compensation."

A year later in *Hart v. State*, 671 N.E.2d 420, (Ind. Ct. App. 1996) the court also held a Town Marshal: "is a law enforcement officer under Ind. Code § 35-41-1-17 and has the powers of other law enforcement officers in executing the orders of the legislative body and enforcing laws. Ind. Code 36-5-7-4."

It is therefore my legal opinion, based upon the above statutes and case law, that:

- a) Indiana law clearly mandates that the Town of Winfield must appoint a town marshal or, in the alternative, abolish the position of town marshal and establish a police department.
- b) The Town of Winfield is in direct violation of Indiana law if it fails or refuses to appoint a town marshal or abolish the office of town marshal and create a police department.

If you have any questions regarding the above opinions, please feel free to contact me at your earliest convenience.

Sincerely,



John M. Kopack  
Attorney at Law

JMK/cw  
*dictated but not read*

Encl: none  
cc: