

STATE OF INDIANA) IN THE OWEN COUNTY CIRCUIT COURT NO. ____
) SS:
COUNTY OF OWEN) CAUSE NO.

OWEN COUNTY COUNCIL, ex rel. Jennifer)
Abrell, in her official capacity as President of)
the Owen County Council,)
)
Petitioner,)
)
v.)
)
OWEN COUNTY BOARD OF)
COMMISSIONERS; Donnie Minnick, in his)
official capacity as President of Owen County)
Board of Commissioners; Jeff Brothers, in his)
official capacity as Member of the Owen)
County Board of Commissioners; and Steve)
Williamson, in his official capacity as Member)
of the Owen County Board of Commissioners;)
and OWEN COUNTY AUDITOR,)
)
Respondents.)

**WRIT OF PROHIBITION AND ACTION FOR MANDATE AND REQUEST
FOR DECLARATORY JUDGMENT**

The Petitioner/Relator, Owen County Council, by counsel, requests that this Court grant its Writ of Prohibition, Action for Mandate, and Request for Declaratory Relief and in support would show the Court as follows:

I. PARTIES

1. The Petitioner/Relator, the Owen County Council (“Council”), is the legislative body of Owen County, Indiana. Ind. Code § 36-2-3.7. Jennifer Abrell is the current President of the Council.

2. The Respondent, the Owen County Board of Commissioners, is the executive body of Owen County. I.C. § 36-2-2-2. Donnie Minnick, Jeff Brothers, and Steve Williamson,

comprise the Owen County Board of Commissioners (“Commissioners”).

3. The Respondent, the Owen County Auditor, is named only for the purpose of providing complete relief to the Petitioner under Rule 19 of the Indiana Rules of Trial Procedure.

II. JURISDICTION AND VENUE

4. The Council is authorized to seek a writ of prohibition pursuant to the provisions of I.C. § 34-27-2-1 *et seq.*

5. The Council is authorized to pursue an action for mandate pursuant to the provisions of I.C. § 34-27-3-1 *et seq.*

6. This Court has jurisdiction over the claims for declaratory relief under the Uniform Declaratory Judgment Act, I.C. § 34-14-1-1 *et seq.*

7. All conditions precedent to this Court’s exercise of jurisdiction over this matter have been satisfied, and this Court is vested with jurisdiction over this matter.

8. The action being challenged occurred, and will continue to occur, in Owen County, Indiana. The principal place of business of Petitioner and Respondent is in Owen County, Indiana. Accordingly, venue is proper in this Court pursuant to Rule 75 of the Indiana Rules of Trial Procedure.

9. The Council has standing to bring this action for the following reasons:

- a. By statute, only the Council has the power and authority to determine the wages and rates of pay for County employees;
- b. The challenged actions in this case involve decisions by the Commissioners to establish wages and rates of pay for certain Owen County employees;
- c. By exercising authority vested exclusively in the Council, the Commissioners acted in violation of Indiana law and harmed the interests and authority of the Council.

d. Therefore, the Council was aggrieved or adversely affected by Respondents' action.

10. A dispute exists between the parties because the Commissioners contend they have the authority to establish wage rates in certain circumstances, contrary to Indiana law.

11. The Council has a substantial present interest in the relief requested because its power and authority is at issue.

III. Facts and Statutory Authority at Issue

12. Pursuant to I.C. § 36-2-5-3, the Council, as Owen County's fiscal body, is authorized "to fix the compensation of officers, deputies, and other employees whose compensation is payable from the county general fund."

13. Further, it is the Council that makes the necessary appropriations for monies to be expended by the County.

14. The Council, as required by I.C. § 36-2-5-3, established a salary schedule setting forth the wage rates for all covered county employees.

15. As to the employees involved in the dispute at issue in this Complaint, those employees are paid on an hourly basis as opposed to a salary basis and are classified as "non-exempt" under the Fair Labor Standards Act ("FLSA"), a federal statute that generally requires non-exempt employees to be paid overtime at a rate of time and one half their regular rate of pay for all hours greater than forty (40) worked in a regular work week.

16. To calculate an employee's hourly rate for FLSA overtime purposes, the County generally must include all forms of wages provided to that employee. Thus, the wage rates established by the County for its hourly work force, and set forth in the salary ordinance, include the employee's base rate of pay and longevity pay.

17. Longevity pay is a form of wages that provides for certain County employees to receive additional wages based upon their length of service with the County. The issue in this case involves a dispute over whether and, if so how much, certain employees (“Affected Employees”) are entitled to receive in longevity pay.

18. Employees entitled to receive longevity pay receive that longevity pay as part of their hourly wage rate as set in the salary ordinance. The hourly rates contained in the salary schedule are then used to calculate the amount of overtime pay (if any) that an employee is entitled to receive under the FLSA.

19. The Council appropriated the 2016 funds necessary to pay the regular and anticipated overtime wages of all County employees, including the Affected Employees.

20. The longevity provisions approved by the Council provided that employees who separated from County employment but who then were rehired by the County within ninety (90) days of separation could continue to receive longevity pay as though the employee had no break in service.

21. The Commissioners determined that the longevity system for County employees should be changed. Specifically, the Commissioners determined that employees who separated from County employment but who then are rehired by the County within one year of separation could continue to receive longevity pay as though the employee had no break in service.

22. The Commissioners then instructed the Owen County Auditor that the Affected Employees who were rehired by the County and had breaks in service greater than 90 days but less than one year should receive longevity pay as though the employees had no break in service.

23. The Auditor did not adjust the hourly rates of the Affected Employees as directed by the Commissioners because the Council neither approved the change in the salary schedule

nor appropriated the additional funds to pay those new wage rates.

24. The decision to increase the amounts of longevity pay the Affected Employees would receive, if implemented, increase the hourly rate of the Affected Employee beyond the amount set by the Council.

25. As of the date of the filing of this action, the Council has not approved the higher longevity rate for the Affected Employees.

26. Further, the Council has not acted to increase the appropriations of the departments employing the Affected Employees. Therefore, there is no appropriation to pay the increased wage rates requested by the Commissioners.

27. Based upon information learned by the Council, the Council believes that the Commissioners were informed of the Council's decision not to increase the wage rates of the Affected Employees and of the fact that the Council did not approve any additional appropriation.

28. The Commissioners, with knowledge of this information, took steps to circumvent the Council's statutory authority as contained I.C. § 36-2-5-3. First, the Commissioners directed the County Auditor to pay longevity to the Affected Employees in the form of a lump sum payment, thus effectively increasing the amount of pay received by the Affected Employees without Council approval. Second, the Commissioners changed the County's longevity program by increasing from ninety (90) days to one year the amount of time that an employee could be separated from County employment yet not experience a break in service for purposes of longevity payments. The Commissioners did so even though no appropriation was made by the Council to cover the increased costs of this change.

COUNT I – WRIT OF PROHIBITION AND MANDATE

29. The Council incorporates by reference paragraphs 1 through 27 as if fully set forth herein.

30. It is the Council, not the Board of Commissioners, that has the authority to set wage rates.

31. Accordingly, the actions of the Commissioners in attempting to pay the Affected Employees is in excess of their statutory authority and is ultra vires and void.

32. The Commissioners' actions in attempting to circumvent the Council's authority by directing the County Auditor to pay additional longevity pay to the Affected Employees is in excess of the Commissioners' statutory authority and is ultra vires and void.

33. I.C. § 34-27-2-1 provides, "the writ of prohibition commands the court and party to whom the writ is directed to: (1) refrain from any further proceedings in the matter specified in the action until the return of the writ and further order of the court; and (2) upon the return, to show cause why the party to whom the writ is directed is not absolutely restrained from any further proceedings in the matter."

34. The facts described above warrant the entry of a Writ of Prohibition prohibiting the Commissioners from taking any further action with respect to additional longevity payments to the Affected Employees or any other similarly situated employees.

35. I.C. § 34-27-3-1 provides, "an action for mandate may be prosecuted against any inferior tribunal, corporation, public or corporate officer, or person to compel the performance of any: (1) act that the law specifically requires; or (2) duty resulting from any office, trust, or station." The facts described above warrant the entry of a mandate requiring the Commissioners to rescind any actions taken in excess of their statutory authority.

WHEREFORE, the Council asks this Court to issue a Writ of Prohibition and a Mandate: Prohibiting the Auditor of Owen County and the Commissioners from taking any action to cause any longevity payment to be made, in any form, to the Affected Employees without Council approval.

COUNT II – DECLARATORY JUDGMENT

36. The Council incorporates by reference paragraphs 1 through 35 as if fully set forth herein.

37. Indiana’s Uniform Declaratory Judgment Act (I.C. § 34-14-1-1 *et seq.*) provides, in pertinent part, that “courts of record within their respective jurisdictions have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” I.C. § 34-14-1-1.

38. I.C. § 34-14-1-2 provides that “any person ... whose rights, status, or other legal relations are affected by a statute ... may have determined any question of construction or validity arising under the ... statute ... and obtain a declaration of rights, status, or other legal relations thereunder.”

39. The Council has no adequate remedy at law and therefore seeks a declaration that the Commissioners’ actions were void and that the Commissioners lack authority to pursue any additional actions regarding additional longevity payments as set forth in this Complaint.

40. If this Court agrees that the Commissioners’ actions were illegal and/or void and the Commissioners lack authority to set longevity wage rates, the Council requests a declaration from this Court so stating.

WHEREFORE, pursuant to I.C. § 34-14-1-1 *et seq.*, the Council requests a declaratory judgment:

- A. Prohibiting the Auditor of Owen County and the Commissioners from taking any action to cause any longevity payment to be made, in any form, to the Affected Employees without Council approval;
- B. Prohibiting the Commissioners from determining longevity pay rates and schedules without Council approval;
- C. Prohibiting the Commissioners from circumventing the Council's authority by paying longevity pay in the form of claims submitted by employees.

Respectfully submitted,

FROST BROWN TODD LLC

By: /s/Anthony W. Overholt

Anthony W. Overholt, # 16481-49
Attorneys for Petitioner/Relator
Owen County Council

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served this 14th day of March, 2017, via first class mail, postage prepaid upon the following:

Richard W. Lorenz
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/s/Anthony W. Overholt
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