

STATE OF INDIANA – COUNTY OF OWEN
IN THE OWEN CIRCUIT COURT II
CASE NO. 60C02-1703-MI-000094

OWEN COUNTY COUNCIL,
Ex Rel., Jennifer Abrell,
in her official capacity as
President of the Owen County
Council,
PETITIONER,

VS.

OWEN COUNTY BOARD OF
COMMISSIONERS; Donnie Minnick,
in his official capacity as President of the
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.

**RULING ON MOTIONS FOR SUMMARY JUDGMENT,
FINDINGS, CONCLUSIONS AND FINAL JUDGMENT**

This case came before the Court on November 8, 2017 for hearing on Motions for Summary Judgment filed by the Owen County Council (herein “Council”) and by the Owen County Board of Commissioners (herein “Commissioners”), and the written responses thereto filed by all parties. The Council appeared by its counsel, Anthony W. Overholt. The Commissioners appeared by their counsel, Richard W. Lorenz. The Owen County Auditor (herein “Auditor”) appeared by counsel, Maura J. Hoff. The Court then heard the oral arguments of all counsel upon the respective motions. The Court then took the matter under advisement and agreed to enter written findings and conclusions of law as requested by the Commissioners, in writing, prior to the commencement of the hearing.

Background

This action was initiated by the Council by the filing of a “Writ of Prohibition and Action for Mandate and Request for Declaratory Judgment” on March 14, 2017. The Council seeks a writ of prohibition pursuant to IC 34-27-2-1 *et seq.*, an action for mandate pursuant to IC 34-27-3-1 *et seq.*, and a claim for declaratory relief under IC 34-14-1-1 *et seq.* The challenged actions in this case involve certain decisions by the Commissioners to establish wages, rates of pay and eligibility requirements [specifically, “longevity pay”] for certain Owen County employees. The Council asserts that the Commissioners acted without legal authority in this regard, and contrary to well-established Indiana Law regarding the balance of powers between the Council and Commissioners in county government.

At the core of the Council’s claims, the Council asserts that the Commissioners changed the longevity pay provisions of the salary schedule and Salary Ordinance approved by the Council for 2016. Specifically, the Commissioners changed the Personnel Policy to provide that an employee who separated from county employment, but who then was rehired by the county within one year of separation [instead of 90 days set forth in the Salary Ordinance] could continue to receive longevity pay as though the employee had no break in service. Thereafter, the Commissioners instructed the Auditor to pay employees who had a break in service greater than 90 days but less than one year to receive longevity pay as though the affected employee had no break in service. The Auditor refused to adjust the hourly rates of these specific employees because the Council had not approved the change in the salary schedule or Salary Ordinance, nor appropriated the additional funds to pay these new wage rates. To date, the Council has not acted to increase the appropriations of the departments employing the affected employees, and have not appropriated funds to pay the increased wage rates requested by the Commissioners.

The Council asserts that the Commissioners then took certain actions to circumvent the Council's statutory authority under IC 36-2-5-3.¹ The Council asserts that the Commissioners directed the Auditor to pay longevity to the affected employees in the form of a lump sum payment, via claims submitted by the affected employees and approved by the Commissioners, thereby increasing the amount of pay received by the affected employees without Council approval or appropriation.

The Council requests that the Court: (1) Issue a Writ of Prohibition and a Mandate prohibiting the Auditor 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; (2) Issue a declaratory judgment that states that the Commissioners' actions were illegal and/or void, and that the Commissioners lack legal authority to set longevity wage rates; and, (3) Prohibit the Commissioners from circumventing the Council's authority by paying longevity pay in the form of claims submitted by the affected employees.

The presiding Judge of this Court recused on March 15, 2017. Special Judge Elizabeth Cure was appointed to the case pursuant to Local Rule TR 79H on March 16, 2017. On March 27, 2017, counsel for the Commissioners entered his appearance, requested an extension of time in which to Answer, and also filed a Motion for Change of Venue From Judge. On April 4, 2017, Special Judge Cure granted the Motion for Change of Judge. Counsel for the Council and Commissioners

¹ 36-2-5-3. Number, classification and compensation of employees.

(a) The county fiscal body shall fix the compensation of officers, deputies, and other employees whose compensation is payable from the county general fund, county highway fund, county health fund, county park and recreation fund, aviation fund, or any other fund from which the county auditor issues warrants for compensation. This includes the power to:

- (1) fix the number of officers, deputies, and other employees;
- (2) describe and classify positions and services;
- (3) adopt schedules of compensation; and
- (4) hire or contract with persons to assist in the development of schedules of compensation.

(b) Notwithstanding subsection (a), the board of each local health department shall prescribe the duties of all its officers and employees, recommend the number of positions, describe and classify positions and services, adopt schedules of compensation, and hire and contract with persons to assist in the development of schedules of compensation.

(c) This section does not apply to community corrections programs (as defined in IC 11-12-1- 1 and IC 35-38-2.6-2).

communicated with the undersigned Senior Judge, and thereafter notified the Court of the agreed selection of the undersigned Senior Judge as Special Judge in the case, who was thereafter appointed as Special Judge in the case.

On April 12, 2017, the Commissioners filed several pleadings: (1) Answer and Affirmative Defenses to the Council's Writ and Action and Request; (2) A motion to add a party, the State Board of Accounts, for Just Adjudication; and (3) A Counterclaim against the Council, a Cross-Claim naming the Auditor as a cross-Defendant/Respondent in a claim for Declaratory and Injunctive Relief.

In the Counterclaim, the Commissioners assert that the Board of Commissioners is the county executive of Owen County, as set forth in IC 36-2-2-2.² The Commissioners assert that, as the county executive, the Commissioners have exclusive authority to establish benefits pursuant to IC 5-10-6-1.³ The Commissioners also assert that the listing and establishment of county employee benefits is within the exclusive province of the county executive, and that such benefits are not to be construed as compensation. The Commissioners admit that, on or about January 2016, the Commissioners elected to change the Personnel Policy with regard to longevity by expanding the qualifying hiatus period for person returning to employment with the county from 90 days to one year. The Commissioners do not dispute the Council's authority to determine the rate of longevity pay, but argue that the Commissioners, alone, have the authority to set policy to determine who qualifies for the longevity benefit. The Commissioners assert that the incorporation of the "longevity factor" in the Salary Ordinance contravenes the authority and separation of powers provisions of Indiana law.

In their Cross Claim directed to the Auditor, the Commissioners assert that they authorized and directed the Auditor to pay the re-computed longevity

² 36-2-2-2. Board of county commissioners — County executive — Establishment.

The three (3) member board of commissioners of a county elected under this chapter is the county executive. In the name of "The Board of Commissioners of the County of ." the executive shall transact the business of the county.

³ Which reads in part, as follows: "Employees of the political subdivisions of the state may be granted a vacation with pay, sick leave, paid holidays, and other similar benefits by ordinance of the legislative body of a county, city, town, township, or controlling board of a municipally owned utility, board of directors or regents of a cemetery, or board of trustees of any library district."

obligations purportedly due and owing to five affected employees. The Commissioners further assert that the Auditor initially refused to pay the claims of the affected employees, but later made the payments “under protest”. The Commissioners assert that the Auditor’s refusal to pay the “continuing obligations of the county” [as to the affected employees] creates “potential and actual liability to the county in derogation of [the Auditor’s] statutory duties under IC 5-11-10-1.6. Finally, the Commissioners assert that the actions of the Auditor have created a “discriminatory” treatment of the affected employees, and those employees who are eligible for extended ‘benefits’ under the new [longevity] policy.

The Commissioners request that the Court issue a declaratory judgment, stating whether the Commissioners are the sole executive authority for changes to nineteen⁴ ‘benefits’ listed in the county Personnel Policy, whether the Auditor can pay the affected employees from other line item funding not the subject matter of the salary ordinance, whether the Commissioners are the sole and exclusive legislative authority for the policies of the county, and whether the Commissioners are the sole and exclusive authority to declare the existence of a county employee benefit.

On May 4, 2017, counsel for the Auditor entered an appearance, and on May 11, 2017 the Auditor filed an Answer to the Commissioners’ Cross-Claim. On May 12, 2017, the Council filed an Answer to the Commissioners’ Counterclaim.

It is the Auditor’s position, as stated in the Auditor’s “Brief in Support of Response to Cross Motions for Summary Judgment” (filed 11-1-2017), that the Auditor “may not issue a warrant on the county treasury for wages that have not been appropriated by the Council.” The Auditor states that, in the instant dispute, the Council “did not pass an additional appropriation to cover the increase in longevity proposed by the Commissioners.” The Auditor further asserts that the Auditor cannot pay the longevity pay to the [affected employees] from “other line

⁴ Including: Auto mileage benefits, Bereavement Leave benefits, Dental Insurance benefits, Family Leave benefits, Health Insurance benefits, Holiday benefits, Jury Duty Leave benefits, Life Insurance benefits, Long or Short Term Disability benefits, Longevity pay benefits, Medical Leave benefits, Military Leave benefits, Paid Time Off (PTO) benefits, Pension Plan benefits, Personal Leave benefits, Travel Allowance benefits, Vacation benefits, Voting Time Off benefits, Witness Duty Leave benefits

item funding not the subject matter of the salary ordinance.” The Auditor notes that “the Council did not pass an additional appropriation to cover the increase in longevity proposed by the Commissioners.”

The Auditor further asserts in the brief that the answer to the Commissioners’ query [regarding whether the Auditor can pay the longevity pay to the ‘affected employees’ from other line item funding not the subject matter of the salary ordinance], is ... no. The Auditor asserts that only the Council can move funds from one appropriated budget line item to another. The Auditor points to Indiana Law, IC 36-2-9-13, to reinforce the statement that the Auditor may not permit an item of appropriation to be overdrawn or to be drawn on for a purpose other than the specific purpose for which it was made.⁵ If the Auditor were to do so, the Auditor could be criminally charged with a Class A Misdemeanor.⁶ Finally, the Auditor asserts that Indiana Law clearly states that a “warrant may be drawn on a county treasury only if the county fiscal body [the Council] has made an appropriation for the money for the calendar year in which the warrant is drawn and that appropriation has not been exhausted. *I.C. 36-2-9-14(c)*.

On May 19, 2017, the Indiana Deputy Attorney General filed a limited appearance on behalf of the State Board of Accounts, and also filed a response in opposition to the Commissioners’ motion to add the State Board of Accounts as a party to the case. A hearing was held on May 25, 2017 upon the Commissioners’ motion to add the State Board of Accounts as a party to the case, attended by all counsel for the parties and the State Board of Accounts. At the conclusion of the case, the Court denied the Commissioners’ motion to add the State Board of

⁵ 36-2-9-13. Appropriation accounts — Penalty for overdrawing appropriations.

(a) The auditor shall keep a separate account for each item of appropriation made by the county fiscal body, and in each warrant the auditor draws on the county treasury the auditor shall specifically indicate which item of appropriation the warrant is drawn against.

(b) The auditor may not permit an item of appropriation to be overdrawn or to be drawn on for a purpose other than the specific purpose for which it was made.

(c) An auditor who knowingly violates this section commits a Class A misdemeanor.

⁶ *Id.*

Accounts as a party to this case, and issued a written ruling to that effect the next day.

Over the next several months, the parties engaged in discovery with the anticipation that the case would next move to a hearing on motions for summary judgment, as the issues presented in this dispute revolved around questions of law and jurisdiction, and not of disputed facts.

On October 4, 2017, the Council and Commissioners filed their respective Motions for Summary Judgment, along with Briefs and Designations of Materials/Evidence. On October 5, 2017, the Court scheduled a hearing on the Motions for November 8, 2017. As noted earlier, the hearing was held as scheduled, with all counsel appearing to be heard by the Court. All necessary materials have been presented to the Court so that the Court may move forward with a final judgment in this matter.

FINDINGS AND CONCLUSIONS OF LAW

1. One of the Council's statutory duties is to prepare an annual Salary Ordinance for the County every fiscal year, as required by I.C. 36-2-5-3.⁷ The Council completed that task for fiscal year 2016.⁸

⁷ 36-2-5-3. Number, classification and compensation of employees.

(a) The county fiscal body shall fix the compensation of officers, deputies, and other employees whose compensation is payable from the county general fund, county highway fund, county health fund, county park and recreation fund, aviation fund, or any other fund from which the county auditor issues warrants for compensation. This includes the power to:

- (1) fix the number of officers, deputies, and other employees;
- (2) describe and classify positions and services;
- (3) adopt schedules of compensation; and
- (4) hire or contract with persons to assist in the development of schedules of compensation.

(b) Notwithstanding subsection (a), the board of each local health department shall prescribe the duties of all its officers and employees, recommend the number of positions, describe and classify positions and services, adopt schedules of compensation, and hire and contract with persons to assist in the development of schedules of compensation.

(c) This section does not apply to community corrections programs (as defined in IC 11-12-1-1 and IC 35-38-2.6-2).

⁸ See: Owen County Council Ordinance, 2016-0001 (adopted January 11, 2016) [In Council's Designation of Materials]

2. The system set up by the County Reform Act for appropriation of county funds by the county council, as a check on the expenditures of public money, should not be set aside nor curtailed except by statute clearly showing such an intention. *Board of Comm'rs v. State*, 216 Ind. 125, 23 N.E.2d 494, 1939 Ind. LEXIS 251 (Ind. 1939).
3. The Board of County Commissioners has and can exercise the powers only as are expressly conferred on it by the constitution and the statutes of the state, or such powers as arise by necessary implication from those expressly granted, or such as are requisite to the performance of the duties which are imposed on it by law. *Board of Comm'rs v. Sanders*, 218 Ind. 43, 30 N.E.2d 713, 1940 Ind. LEXIS 231 (Ind. 1940).
4. In passing upon claims against the county, the Board of Commissioners does not act judicially or as a court; it acts as an auditing board, and its allowance or disallowance of a claim is only prima facie evidence of its correctness.⁹ The Auditor has the right to raise the question of whether a claim is legally made when it is sought to compel the Auditor to order the money paid out of the county treasury.¹⁰ The Auditor cannot issue a warrant to pay a claim without an appropriation, and the Auditor has a duty to disregard the allowance of such claim.¹¹
5. A county Auditor cannot issue paychecks to staff [county employees] without identifying the specific appropriation item against which it was drawn, and would be subject to criminal liability for knowingly permitting an item of appropriation to be overdrawn. See: *Braddock v. Madison County*, 138 Lab. Cas. (CCH) ¶3863, 34 F. Supp. 2d 1098, 1998 U.S. Dist. LEXIS 21119 (S.D.Ind. 1998).

⁹ *Crowe v. Board of Comm'rs of St. Joseph County et al.*, 210 Ind. 404, 3 N.E.2d 76 (Ind. 1936); *Sudbury v. Board of Comm'rs of Monroe County* (1901), 157 Ind. 446, 62 N.E. 45; *Board of Comm'rs of Huntington County v. Heaston* (1896), 144 Ind. 583, 41 N.E. 457; *State ex rel. Behymer v. Perry*, 65 N.E. 528, 159 Ind. 508 (Ind. 1902)

¹⁰ See: *State ex rel. Behymer v. Perry*, 65 N.E. 528, 159 Ind. 508, 509 (Ind. 1902)

¹¹ See: *Indiana ex rel. Workman et al., v. Goldthait*, 172 Ind. 210, 87 N.E. 133 (Ind. 1909), *rehearing denied*.

6. As stated in the State Board of Accounts communication to counsel for the Commissioners (dated 9-7-2016), the State Board of Accounts position regarding this dispute is: **“It would be the Commissioners['] responsibility to set policy, and the Council[‘s] responsibility to fund it.”**¹² [emphasis added]
7. The Owen County Government Employees Wage and Compensation Structure is complex and detailed.¹³ There are ten eligible employee classifications. Each position is assigned to one of eight “Position Groups” based upon similar job responsibilities, tasks and how the position is filled. Within each “Position Group” there are nine “Compensation Components” that are specifically identified and assigned to each “Position Group” and are added together to figure an employee’s total rate of compensation. The nine “Compensation Components” are defined in the Ordinance, and are titled: Base, Cost of Living Adjustment, Level, Longevity, Education, Training, Grade, Rank (applicable only to positions within Sheriff Position Group).¹⁴ The methodology for calculating a given employee’s compensation is shown by example within the Ordinance.¹⁵ An example of how this works in actual practice is demonstrated in the Owen County Wage Scale spreadsheet (in the Commissioners’ Designated Materials), which shows compensation calculations by the various position groups and compensation components.¹⁶
8. The “Longevity” compensation component is quite detailed.¹⁷ In the Salary Ordinance, it is defined as an additional amount of compensation available to an employee based on that employee’s continuous years of service in Owen County government. The date of hire generally determines the longevity

¹² Exhibit “A” of Commissioners’ Counter/Crossclaim for Declaratory and Injunctive Relief.

¹³ See: Owen County Council Ordinance, 2016-0001 (adopted January 11, 2016) [In Council’s Designation of Materials]

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Owen County Wage Scale, dated 1-9-2017, 37 pages (in Commissioners’ Designated Materials)

¹⁷ See: Owen County Council Ordinance, 2016-0001 (adopted January 11, 2016) [In Council’s Designation of Materials]

date. As stated in this definition section: “An employee who leaves their position in good standing will not lose their eligibility for longevity if the employee gains or re-gains employment with Owen County government within 90 days of their date of termination.”¹⁸ It is this specific provision within the longevity section of the Salary Ordinance that is at the heart of the present dispute between the Council and Commissioners.

9. In reality, and for the purposes of this case, there is no distinction between the terms: “wages,” “compensation,” or “benefits.” Any money paid to a county employee out of the county treasury is “compensation” of some sort, regardless of whether the money is paid to the employee as the result of “wages,” reimbursements or other named “benefits.” As “compensation,” the money cannot be paid to the employee out of the county treasury unless and until the Council has appropriated sufficient funding for such compensation. If a county employee is receiving money from the county treasury [and that is the only identifiable source of money in these instances] for pay or reimbursement of: Auto mileage benefits, Bereavement Leave benefits, Dental Insurance benefits, Family Leave benefits, Health Insurance benefits, Holiday benefits, Jury Duty Leave benefits, Life Insurance benefits, Long or Short Term Disability benefits, Longevity pay benefits, Medical Leave benefits, Military Leave benefits, Paid Time Off (PTO) benefits, Pension Plan benefits, Personal Leave benefits, Travel Allowance benefits, Vacation benefits, Voting Time Off benefits, Witness Duty Leave benefits, etc. -- it must *still* be paid by the Auditor by Warrant out of the county treasury from *appropriated* funds for that purpose, authorized and approved by the Council.

¹⁸ *Id.*

**RULING ON MOTIONS FOR SUMMARY JUDGMENT,
WRIT OF PROHIBITION AND MANDATE
AND
DECLARATORY JUDGMENT**

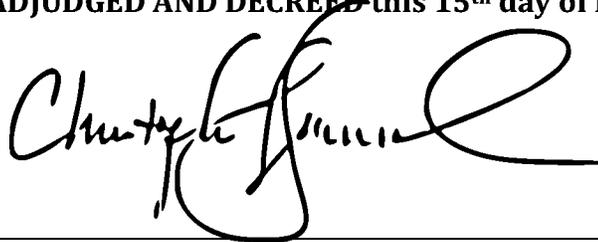
1. Summary judgment serves to terminate litigation about which there can be no material factual dispute and that can be resolved as a matter of law. *Payton v. Hadley*, 819 N.E.2d 432, 438 (Ind. Ct. App. 2004). Summary judgment is appropriate “if the designated evidentiary matters show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Ind. R. Tr. P. 56 (C). In the instant case, there is no material factual dispute and this dispute can be resolved as a matter of law.
2. The Council is the lawful fiscal body of county government and is the *only* branch of county government authorized to set compensation of all county employees not exempted by Indiana law. Only the Council is authorized to appropriate funds from the county treasury for *payment* of any monies payable, whether that be wages, compensation, benefits or any other claims against the county treasury.
3. The Commissioners, as the executive branch of county government, are lawfully authorized to establish a variety of policies that effect the operation of county government, *including* the nineteen ‘benefits’ listed in the county Personnel Policy. But, if the *implementation* of the particular policy requires the payment of *money from the county treasury*, such benefit cannot be claimed or awarded without the prior approval of the Council by the appropriation of sufficient funds for a specific line item from which the Auditor may issue a warrant of payment.
4. The Commissioners *cannot, and shall not*, ‘compel’ the Council, the county fiscal body, to appropriate funds from the county treasury to *implement the funding of a change in the county Personnel Policy* initiated by the Commissioners. It is clear that the separation of powers in county government require the Commissioners

and the Council to *communicate and collaborate* to achieve and implement the desired change... *or not*.

5. The Commissioners may not circumvent the Council's fiscal authority by approving claims for payment of longevity pay submitted by the affected employees. The Commissioners' actions in approving the affected employees claims for "longevity pay" were, and are, *administrative* in nature, not *judicial*, and are *void* or *voidable* unless specific funding from the county treasury was and is *approved* and *appropriated* by the Council.
6. The Auditor may not, and *shall not*, issue a warrant on the county treasury for wages (compensation) that have not been appropriated by the Council. The Auditor may not, and *shall not*, permit an item of appropriation to be overdrawn or to be drawn on for a purpose *other than the specific purpose for which it was made*. The Auditor may only issue a warrant drawn on a county treasury if the county fiscal body (the Council) has made an *appropriation for the money for the calendar year in which the warrant is drawn*, and that appropriation has not been exhausted.
7. In this case, the Auditor may not, and *shall not*, pay "longevity pay" requiring compensation from the county treasury from *another line item of funding* that is not the subject matter of the Salary Ordinance. In Owen County government, "Longevity pay" *is a part of* the compensation in the salary schedule set forth in the Salary Ordinance, approved by the Council. Only the Council can move funds from one appropriated budget line item to another. In this case, the Council has not approved an additional appropriation for compensation under the Salary Ordinance, and has not approved a transfer of funds into another line item to pay "longevity pay" from another budget line item.
8. The Council's Motion for Summary Judgment upon the Council's original "Writ of Prohibition and Action for Mandate and Request for Declaratory Judgment" is *granted, within the limitations of, and as stated by the Court in this Writ of Prohibition and Mandate and Declaratory Judgment, herein*.

9. The Commissioners' Motion for Summary Judgment upon the Commissioners' Counterclaim is *granted, within the limitations of, and as stated by the Court in this Writ of Prohibition and Mandate and Declaratory Judgment, herein.*
10. The Commissioners' Motion for Summary Judgment upon the Commissioners' Cross Claim against the Auditor is *DENIED*. Judgment is entered in favor of the Auditor and against the Commissioners upon the Commissioners' Cross Claim against the Auditor.
11. This is a **Final Judgment**. Case disposed. Disposition Code: Bench Disposition.

IT IS SO ORDERED, ADJUDGED AND DECREED this 15th day of November, 2017.



SENIOR JUDGE CHRISTOPHER L. BURNHAM, SPECIAL JUDGE

DISTRIBUTION:

ANTHONY W. OVERHOLT, RICHARD W. LORENZ, MAURA J. HOFF