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August 12, 2003

OFFICIAL OPINION 2003-7

Mr. Charles Johnson, III, C.P.A.
State Examiner
State Board of Accounts
302 West Washington Street
4th Floor, Room E418
Indianapolis, Indiana 46204-2765

RE: Political Subdivision Establishment of Rainy Day Funds

Dear Mr. Johnson:

You requested an advisory opinion concerning the application of Indiana Code Sections 36-1-8-5 and 5.1 concerning the establishment of rainy day funds by political subdivisions. Our office withheld issuing an advisory opinion pending the outcome of legislative action taken in 2003.

As you may be aware, two separate acts were passed during the 2003 legislative session which amended Section 36-1-8-5.1. First, Public Law 173-2003 (House Enrolled Act 1242) was signed by Governor O'Bannon on May 7, 2003. Subsequently, Public Law 267-2003 (Senate Enrolled Act 166) was signed by the Governor on May 8, 2003. Pursuant to the established rule of statutory construction, when two inconsistent acts are passed by the same session of the legislature, the more recently passed statute is controlling.¹ Therefore, because Public Law 267-2003 was passed subsequent to Public Law 173-2003, it is effective.

This advisory opinion focuses on the questions that you originally submitted which still appear to be relevant even with the 2003 legislative changes to the pertinent statutes. Please contact my office should you have additional questions or concerns with

¹ *Baldwin v. Reagan*, 715 N.E.2d 332, 340 (Ind. 1999).

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respect to the 2003 legislative changes or regarding the information included in this opinion.

This letter is our response to your request for an opinion on the following issues:

1. Whether the sources of a rainy day fund established by a political subdivision under Indiana Code Section 36-1-8-5 and -5.1 are limited to funds raised by a general or special tax levy.

2. Whether, pursuant to Indiana Code Section 36-1-8-5(b), the fiscal body of a political subdivision is required to transfer the entire balance of an unused fund or whether the fiscal body may transfer only a portion of the fund.

3. Whether Indiana Code Section 36-1-8-5.1(c) allows a political subdivision to transfer ten percent (10%) of the total budget for each fund or ten percent (10%) of the total budget for all funds combined.

4. Whether the reference to “intent” in Indiana Code Section 36-1-8-5.1(b) is a reference to the intent of the fund from which the balance was transferred or the intent of the rainy day fund. In addition, you asked how rainy day funds may be used or whether there are limits to such use.

5. Whether a political subdivision that has transferred money from a statutorily created fund with specific statutory restrictions into a rainy day fund is able to make disbursements for a purpose other than as provided by the originating fund’s statutory restrictions.

6. How the requirement of Indiana Code Section 36-1-8-5(b), indicating the purpose of a tax levy be “fulfilled,” may be applied to transfers to the rainy day fund under Indiana Code Section 36-1-8-5.1

BRIEF ANSWERS

1. The sources of a rainy day fund established by a political subdivision are limited to funds raised by a general or special tax levy under Indiana Code Section 36-1-8-5, or supplemental distributions made by the Indiana Department of Revenue from various county accounts under Indiana Code Section 36-1-8-5.1(a)(2)-(4).

2. The fiscal body of a political subdivision is required to transfer the entire balance of an unused fund under Indiana Code Section 36-1-8-5 to either its general fund or a rainy day fund, but certain limitations apply. Per fiscal year, the amount transferred to a rainy day fund may not exceed ten percent (10%) of the political subdivision’s total budget. The transfer may occur only when no other statute provides that the unused funds are to be transferred elsewhere.

3. The statutory reference to “ten percent (10%) of the political subdivision’s total budget” in Indiana Code Section 36-1-8-5.1(c), indicates the capped amount a political subdivision may transfer into a rainy day fund (under Indiana Code Section 36-1-8-5) is ten percent (10%) of the total budget for all of the political subdivision’s funds combined.

4. The reference to “intent” in Indiana Code Section 36-1-8-5.1(b) is a reference to the intent of the rainy day fund. Rainy day funds are intended to be used during times of economic downturn in order to stabilize a political subdivision’s budget so that spending may be maintained without increasing taxes. Therefore, any appropriation consistent with that general intent would be proper.

5. Indiana Code Section 36-1-8-5(b) indicates that unused balances of funds may be transferred to the rainy day fund “unless a statute provides that it be transferred otherwise.” Therefore, the original statute creating the fund from which the transfer may come is controlling as to any limitations or directions concerning the transfer of the unused funds. Once appropriately transferred to the rainy day fund, disbursements need only be for a use that is consistent with the intent of the rainy day fund and any previous statutory restrictions do not apply.

6. The determination concerning whether the purpose of a tax levy has been fulfilled should be based on an analysis of the specific provisions of the appropriation act and its stipulations concerning the purpose and use of the funds appropriated.

ANALYSIS

I. Overview:

“Rainy day funds,” also commonly referred to as budget stabilization funds, are budgetary tools used by state and local government entities. “Rainy day funds” act as a savings account used to stabilize a budget so that spending may be maintained during times of economic downturn and revenue shortfalls without requiring an increase in taxes.² The funds can be used as a cushion during a period of recession while more long-term restructuring can be debated and implemented.³

As an analogy, the State of Indiana has established a rainy day fund, referred to as the “Counter-Cyclical Revenue and Economic Stabilization Fund.” The stated purpose of the fund is to assist in the stabilization of revenue during periods of economic recession.⁴

² Nat’l Assoc. State Budget Officers, *Budget Processes in the States* 43-44 (Jan. 2002).

³ *Id.* at 44. In addition to rainy day funds, state and local governments also often have “contingency funds.” Contingency funds are often used primarily for disaster relief or unforeseen expenditures.

⁴ Ind. Code § 4-10-18-2.

The fund is administered by the state treasurer who may combine amounts in the fund with other monies “for the purposes of cash management.”⁵

The statute granting political subdivisions the authority to create a rainy day fund is not as detailed as the state statute establishing the state’s “Counter-Cyclical Revenue and Economic Stabilization Fund.” The pertinent statutes regarding the rainy day funds are set out below (2003 legislative amendments are italicized):

36-1-8-5 Funds raised by general or special tax levy; disposition of unused balance

Sec. 5. (a) This section applies to all funds raised by a general or special tax levy on all the taxable property of a political subdivision.

(b) Whenever the purposes of a tax levy have been fulfilled and an unused and unencumbered balance remains in the fund, the fiscal body of the political subdivision shall order the balance of that fund to be transferred as follows, unless a statute provides that it be transferred otherwise:

(1) Funds of a county, to the general fund or rainy day fund of the county, as provided in section 5.1 of this chapter.

(2) Funds of a municipality, to the general fund or rainy day fund of the municipality, as provided in section 5.1 of this chapter.

(3) Funds of a township for redemption of poor relief obligations, to the poor relief fund of the township or rainy day fund of the township, as provided in section 5.1 of this chapter.

(4) Funds of any other political subdivision, to the general fund or rainy day fund of the political subdivision, as provided in section 5.1 of this chapter. However, if the political subdivision is dissolved or does not have a general fund or rainy day fund, then to the general fund of each of the units located in the political subdivision in the same proportion that the assessed valuation of the unit bears to the total assessed valuation of the political subdivision.

(c) Whenever an unused and unencumbered balance remains in the civil township fund of a township and a current tax levy for the fund is not needed, the township fiscal body may order any part of the balance of that fund transferred to the debt service fund of the school corporation located in or partly in the township; but if more than one (1) school corporation is located in or partly in the township, then any sum transferred shall be transferred to the debt service fund of each of those school corporations in the same proportion that the part of the assessed valuation of the school corporation in the township bears to the total assessed valuation of the township.

*(d) Transfers to a political subdivision’s rainy day fund must be made after the last day of the political subdivision’s fiscal year and before March 1 of the subsequent calendar year.*⁶

36-1-8-5.1 Rainy day funds established by political subdivisions

Sec. 5.1. (a) A political subdivision may establish a rainy day fund to receive transfers of unused and unencumbered funds under:

(1) section 5 of this chapter;

(2) *IC 6-3.5-1.1-21.1*;

(3) *IC 6-3.5-6-17.3*; and

(4) *IC 6-3.5-7-17.3*.

⁵ *Id.*

⁶ Ind. Code § 36-1-8-5 (1980), Pub. L. No. 211, Sec. 1. Amended by Pub. L. No. 251-2001, Sec. 1 and Pub. Law. No. 173-2003, Sec. 18.

(b) The rainy day fund is subject to the same appropriation process as other funds that receive tax money. Before making an appropriation from the rainy day fund, the fiscal body shall make a finding that the proposed use of the rainy day fund is consistent with the intent of the fund.

(c) In any fiscal year, a political subdivision may transfer under *section 5 of this chapter* not more than ten percent (10%) of the political subdivision's total budget for that fiscal year to the rainy day fund.

(d) The department of local government finance may not reduce the actual or maximum permissible levy of a political subdivision as a result of a balance in the rainy day fund of the political subdivision.⁷

To summarize, the above statutes give a political subdivision the general authority to establish a rainy day fund comprised of leftover funds raised by general or special tax levies under Indiana Code Section 36-1-8-5, or from supplemental distributions made by the Indiana Department of Revenue from various county accounts.⁸ The fund is “subject to the same appropriation process as other funds that receive tax money.”⁹ Specifically, the fiscal body of the political subdivision must make a finding that the use of the rainy day fund is consistent with the “intent of the fund” before making an appropriation.¹⁰ The statute sets a cap on the amount that a political subdivision may transfer under Section 5 to the rainy day fund in any fiscal year.¹¹ Finally, the Department of Local Government Finance is instructed not to reduce the actual or maximum permissible levy of a political subdivision based on the balance in the rainy day fund.¹²

When the meaning of a statute is ambiguous, the rules of statutory construction are useful. First and foremost, one should determine the intent of the legislature.¹³ The words of a statute are to be given their plain and ordinary meaning.¹⁴ One must presume the legislature is aware of existing statutes in the same area when it enacts a statute.¹⁵ Related statutes should be construed together to give force and effect to each statute.¹⁶ The “goals of the statute and the reasons and policy underlying the statute’s enactment” should be considered.¹⁷ Statutes of a general nature may be modified or limited to the extent that a later more specific statute is inconsistent with the earlier enactment.¹⁸ The

⁷ Ind. Code § 36-1-8-5.1 (2001), Pub. L. No. 251-2001, Sec. 2. Amended by Pub. L. No. 90-2002, Sec. 461, Pub. L. No. 173-2003, Sec. 18, and Pub. L. No. 267-2003, Sec. 15.

⁸ Ind. Code §§ 36-1-8-5—5.1.

⁹ Ind. Code § 36-1-8-5.1(b).

¹⁰ *Id.*

¹¹ Ind. Code § 36-1-8-5.1(c).

¹² Ind. Code § 36-1-8-5.1(d).

¹³ *MDM Inv. v. City of Carmel*, 740 N.E.2d 929, 934 (Ind. Ct. App. 2000).

¹⁴ Ind. Code § 1-1-4-1(1); *See Town of Merrillville v. Merrillville Conservancy Dist.*, 649 N.E.2d 645, 649 (Ind. Ct. App. 1995).

¹⁵ *Town of Merrillville*, 649 N.E.2d at 649.

¹⁶ *Ind. Waste Sys., Inc. v. Bd. of Comm’rs of the County of Howard, Ind.*, 389 N.E.2d 52, 59 (Ind. App. 1979).

¹⁷ *Hall Drive Ins, Inc. v. City of Fort Wayne*, 773 N.E.2d 255, 257 (Ind. 2002).

¹⁸ *Etherton v. Wyatt*, 293 N.E.2d 43, 49 (Ind. App. 1973).

latter of two statutes covering the same subject is controlling as to any conflicting provision.¹⁹

Given the generally accepted definition of “rainy day funds” for state and local governmental purposes, the general intent of the legislature in enacting Indiana Code Sections 36-1-8-5 and 5.1 was presumably to grant political subdivisions the authority to preserve certain leftover revenue for locally related uses during economic downturns. By enacting the statute, the legislature has determined that allowing local entities to create rainy day funds furthers a legitimate public purpose.

The emphasis on empowering the local government to run its own affairs is a consistent trend of the state legislature. In 1980, the legislature adopted the Home Rule Act. Under the Act, a local unit of government is granted broad authority, with few exceptions, to adopt any local law needed “for the effective operation of government as to local affairs.”²⁰ A local unit may legislate only when given specific authority to do so in the enacting statute.²¹ Indiana Code Section 36-1-8-5.1 gives the local units of government such authority to create and use the rainy day funds within the statutorily created guidelines.

II. The Sources for a Political Subdivision’s Rainy Day Funds:

First, you asked whether sources of the rainy day funds are limited to funds raised by a general or special tax levy. The changes in 2003 indicate that rainy day funds may be comprised of leftover funds raised by a general or special tax levy under Indiana Code Section 36-1-8-5, or from supplemental distributions made by the Indiana Department of Revenue from various county accounts described at Indiana Code Section 36-1-8-5.1(a)(2)-(4).

You also asked how the requirement at Indiana Code Section 36-1-8-5(b) indicating that the purpose of the tax levy be “fulfilled” applies to a transfer to a rainy day fund under that statute. Such a determination must be made with respect to the specific provisions of the appropriation act and the stipulations concerning the purpose and use of the funds appropriated.²²

You questioned when the purpose of a “general fund tax levy” would ever be fulfilled for a transfer under Indiana Code Section 36-1-8-5. In interpreting a statute, one must presume the legislature “intended the language used in the statute to be applied logically and was not intended to bring about an unjust or absurd result.”²³ The most logical interpretation of “general tax levy” under Indiana Code Section 36-1-8-5 is not as

¹⁹ *Ind. Waste Sys., Inc.*, 389 N.E.2d at 59.

²⁰ Ind. Code § 36-1-3-2.

²¹ *City of Hammond v. N.I.D. Corp.*, 435 N.E.2d 42, 48 (Ind. Ct. App. 1982).

²² See *Ristine v. State of Indiana*, 20 Ind. 328 (1863).

²³ *Ind. Ins. Guar. Ass'n v. Blickensderfer*, 778 N.E.2d 439, 442 (Ind. Ct. App. 2002) (citing *Civil Rights Comm'n v. County Line Park, Inc.*, 738 N.E.2d 1044, 1048 (Ind. 2000)).

a general tax levy used through the general fund for usual and ordinary expenses of government. In this instance, “general or special tax levy” most likely means a levy for a special reason raised “either by an assessment on real estate specially benefited, or by a general tax on all the property, real and personal located in the taxing district.”²⁴ In other words, in the context of the statute, “general” most logically is used to describe not a general fund tax levy, but a special tax levy that is levied generally on all property or persons in the taxing district.

III. The Statutory Limitations on Transfers to the Rainy Day Fund under Indiana Code Section 36-1-8-5:

Second, you asked whether the fiscal body of a political subdivision is required to transfer the entire balance of an unused fund under Indiana Code Section 36-1-8-5, or whether only a portion of the unused balance may be transferred to a rainy day fund. The statute provides that the unused balances “shall” be transferred into the general fund “or” the rainy day fund in accordance with Section 5.1, “unless a statute provides that it be transferred otherwise.”²⁵ The use of the term “shall” in a statute implies a mandatory obligation.²⁶ The use of the conjunction “or” is a signal that indicates an alternative exists.²⁷ Based on the statutory direction, a political subdivision is required to transfer leftover balances from funds raised by general or special tax levies to either the political subdivision’s general fund or the rainy day fund, but certain limitations apply.²⁸

The statute sets out three limitations on transfers to a rainy day fund under Section 5. First, Section 5.1 clarifies that per fiscal year, total transfers into a rainy day fund under Indiana Code Section 36-1-8-5 may not exceed ten percent (10%) of the political subdivision’s total budget in any given fiscal year, as clarified below.²⁹ Second, the leftover unused and unencumbered funds may be transferred to either the general fund or the rainy day fund; nothing in the statute would appear to prohibit a political subdivision from dividing the amount transferred between its general fund and rainy day fund if the political subdivision so chose.³⁰ Third, a transfer of funds may occur only when no other statute provides that the unused and unencumbered funds are to be used in another manner.³¹

The statutes do not set a limit on the ultimate size a rainy day fund may reach; however, Section 5.1(c) sets a cap on the amount a political subdivision may transfer into

²⁴ *South Bend Pub. Transp. Corp. v. City of South Bend*, 428 N.E.2d 217, 221 (Ind. 1981) (citing *Dep’t of Pub. Sanitation of the City of Hammond v. Solan*, 97 N.E.2d 495, 500 (Ind. 1951)).

²⁵ Ind. Code § 36-1-8-5.

²⁶ *Ind. Civil Rights Comm’n v. Indianapolis Newspapers, Inc.*, 716 N.E.2d 943, 947 (Ind. 1999).

²⁷ *Field v. Area Plan Comm’n. of Grant County, Ind.*, 421 N.E.2d 1132, 1137 (Ind. Ct. App. 1981).

²⁸ These same limitations would not appear to apply to supplemental distributions made by the Indiana Department of Revenue under Indiana Code Section 36-1-8-5.1(a)(2)-(4).

²⁹ Ind. Code § 36-1-8-5.1(c).

³⁰ Ind. Code § 36-1-8-5(b).

³¹ *Id.*

a rainy day fund in any given fiscal year under Indiana Code Section 36-1-8-5. The statute indicates no more than ten percent (10%) of the “political subdivision’s total budget” for the fiscal year may be transferred to the rainy day fund. You asked whether: 1) the language of the statute means the amount to be transferred is capped at ten percent (10%) of the total budget per individual fund, resulting in no more than ten percent (10%) of any fund being transferred; or 2) whether the amounts to be transferred are capped at ten percent (10%) of the total budget for all of the political subdivision’s funds combined, which could result in a transfer of more than ten percent (10%) from a single fund, but only if the amount transferred is not more than ten percent (10%) of the subdivision’s total budget. In the statutory language, the possessive form of “political subdivision” modifies “total budget.” The legislature chose only the term “budget” and not the term “fund” when delineating what sets the cap. Given its plain and ordinary meaning, “political subdivision’s total budget for that fiscal year” would appear to imply an all-inclusive total of all of the political subdivision’s funds combined. Therefore, if ten percent (10%) of a fund’s balance is \$10,000, but ten percent (10%) of the political subdivision’s total budget is \$100,000, the subdivision may transfer \$100,000 from the fund into its rainy day fund.

IV. Acceptable Appropriations from the Rainy Day Fund:

You also asked for clarification regarding the language of Section 5.1(b) which deals with appropriations from a rainy day fund by the political subdivision.³² That section indicates that a fiscal body must make a finding that any appropriation from its rainy day fund is for a use that is “consistent with the intent of the fund.”³³ You asked whether the statute refers to the intent of the rainy day fund or the original intent of the fund from which the balance was transferred. Within Section 5.1(b), the word “fund” is modified by the adjective “rainy day” twice within the same sentence. Once modified within the sentence, it is appropriate to assume the same modification applies to the noun thereafter. Had the legislature intended to refer to another type of fund within the same sentence, presumably it would have used another adjective to describe “fund.” Therefore, a fiscal body must make a finding that any appropriation from a rainy day fund is for a use that is consistent with the intent of the rainy day fund. Rainy day funds are intended to be used during times of economic downturn in order to stabilize a budget so that spending may be maintained without a tax increase. Any appropriation during an economic downturn which is consistent with that general intent would be appropriate.

You also asked whether it is proper for a political subdivision to transfer amounts in funds raised by general or special tax levies for a specific purpose to a rainy day fund where the funds may ultimately be used for other purposes. Indiana Code Section 36-1-8-5(b) indicates that unused and unencumbered balances of funds raised by general or special tax levies shall be transferred to the general fund or rainy day fund of the subdivision “unless a statute provides that it be transferred otherwise.” Therefore, the

³² Ind. Code § 36-1-8-5.1(b).

³³ *Id.*

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original statute creating the fund from which the transfer may occur is controlling as to any limitations or directions concerning the transfer of unused funds. The legislature maintains “full power and control over the disposition of revenues derived from taxation, except when there exists some constitutional provision to the contrary, and this power extends to such taxes as are raised by the political subdivisions of the state under the authority of the state.”³⁴ Therefore, barring any legislative direction providing that the unused funds be transferred elsewhere, the funds should be transferred into the political subdivision’s general or rainy day fund. Once deposits are made into the rainy day fund, nothing would prohibit a disbursement from the rainy day fund for a purpose outside of those for which the unused funds were originally raised. According to the statutory language, disbursements from the rainy day fund need only be for a use that is consistent with the intent of the rainy day fund, i.e., as noted previously, to provide relief during economic downturns.³⁵

CONCLUSION

In summary, the above information is intended to provide you with some guidance as to the implementation of Indiana Code Sections 36-1-8-5 and -5.1 until the legislature amends the existing statutes or enacts a more specific statute regarding rainy day funds. Political subdivisions should be encouraged to develop policies to guide the creation, maintenance and use of rainy day funds for stabilization purposes.

Sincerely,

Stephen Carter
Attorney General

Rebecca Walker
Deputy Attorney General

³⁴ *South Bend Pub. Transp. Corp.*, 428 N.E.2d 224.

³⁵ IND. CODE § 36-1-8-5.1(b).