

February 4, 2010

OFFICIAL OPINION 2010-5

Mr. Bruce A. Hartman, CPA
State Examiner
State Board of Accounts
302 W. Washington St., Room E418
Indianapolis, IN 46204

RE: Knox County Council Ordinance No. 2009-3

Dear Mr. Hartman:

You requested an advisory opinion concerning Knox County Council Ordinance No. 2009-3, which restricts the Knox County Auditor's ability to issue a warrant for claims for services provided in a prior fiscal year. You asked the following questions:

1. May the Knox County Council place a condition upon, or otherwise restrict, the Knox County Auditor in her duty to draw a warrant as the Council has set forth in the Ordinance?
2. Does a county auditor have a duty to pay a claim in the current fiscal year for services received by the county in a prior fiscal year if the requirements of Ind. Code Chpt. 36-2-5, Ind. Code Chpt. 36-2-6, and Ind. Code Chpt. 36-2-9 are met?
3. Is the authority purportedly reserved by the Knox County Council under the Ordinance prohibited by or in conflict with Ind. Code § 36-2-6-4, Ind. Code § 36-2-6-7, Ind. Code § 36-2-9-14(c), or any other law?
4. Did the Knox County Council have the power to enact the Ordinance?

BRIEF ANSWERS

1. The Knox County Council does not have the power to restrict the auditor's ability to issue a warrant if the issuance of the warrant complies with state law.
2. The auditor has the duty to issue a warrant for a claim if it satisfies the statutory requirements. The warrant may be drawn if the County Council has made an appropriation for the money in the calendar year in which the warrant is drawn and the appropriation has not been exhausted.
3. The Council's purported authority to approve warrants is inconsistent with Indiana Code §§ 5-11-10-1.6, 36-2-6-4 and 36-2-6-7.
4. The Council does not have the authority to enact an ordinance such as the one in question, because it is not the county executive. The Board of Commissioners is the county executive.

The Council is required to adopt ordinances setting tax rates and making appropriations, but this ordinance does neither.

BACKGROUND

Knox County Council Ordinance No. 2009-3 establishes certain procedures to be followed when issuing warrants to be paid out of the Knox County Treasury. It includes five items, three of which are not at issue for purposes of your inquiry. Those three items are consistent with the statutory requirements for issuance of warrants. Your inquiry concerns items 4 and 5:

(4) Unless authorized to do otherwise by the Knox County Council, the Knox County Auditor shall cause a warrant or claim to be drawn on the county treasury only in the year in which the item of appropriation was approved by the Knox County Council and only from an item of appropriation which has not been exhausted for that fiscal year.

(5) Unless specifically authorized to do so by the Knox County Council, the Knox County Auditor shall not leave items of appropriation which were approved in a prior fiscal year unpaid and then cause a warrant or claim to be drawn from funds appropriated for the next fiscal year.

ANALYSIS

Knox County Council Ordinance No. 2009-3 goes beyond the Knox County Council's authority as the county fiscal body. While a county has broad powers to conduct its affairs under the Home Rule Act (Ind. Code chapter 36-1-3), those powers must be exercised by the Board of Commissioners, not the Council.

To the extent that the Ordinance attempts to impose limits on the ability of the county auditor to pay a claim, it is inconsistent with state statute. The county auditor is the fiscal officer of the county. *See* Ind. Code § 36-2-9-2. Indiana Code § 5-11-10-1.6(d) provides "the fiscal officer of a governmental entity shall issue checks or warrants for claims by the governmental entity that meet all of the requirements of this section." Indiana Code § 5-11-10-1.6(c) sets out the requirements in detail:

The fiscal officer of a governmental entity may not draw a warrant or check for payment of a claim unless:

- (1) there is a fully itemized invoice or bill for the claim;
- (2) the invoice or bill is approved by the officer or person receiving the goods and services;
- (3) the invoice or bill is filed with the governmental entity's fiscal officer;
- (4) the fiscal officer audits and certifies before payment that the invoice or bill is true and correct; and
- (5) payment of the claim is allowed by the governmental entity's legislative body or the board or official having jurisdiction over allowance of payment of the claim.

In a county not having a consolidated city, the county executive has jurisdiction over allowance of payment of claims. *See* Ind. Code § 36-2-6-4 and Ind. Code § 36-2-6-7. The Board of Commissioners is the county executive pursuant to Ind. Code § 36-2-2-2.

A warrant for a claim incurred in one year may be issued in a later year, as long as money is appropriated in the later year. Ind. Code § 36-2-9-14(c) provides that “A warrant may be drawn on a county treasury only if the county fiscal body has made an appropriation for the money *for the calendar year in which the warrant is drawn* and that appropriation has not been exhausted.” (Emphasis added.) There is no requirement that the warrant be for claims incurred or services provided in the current year.

Indiana’s Home Rule Act grants units of government broad powers to conduct their affairs. Ind. Code § 36-1-3-4(b) grants a governmental unit, including a county, “(1) all powers granted it by statute; and (2) all other powers necessary or desirable in the conduct of its affairs, even though not granted by statute.” Under Ind. Code § 36-1-3-6, the executive body of a county wanting to exercise a power must adopt an ordinance prescribing a specific manner for exercising the power.¹ The Knox County Board of Commissioners is the executive body of Knox County. *See* Ind. Code § 36-1-2-5; Ind. Code § 36-2-2-2. Therefore, if Knox County wishes to impose conditions on the payment of claims or the issuance of warrants, those conditions must be enacted by the Commissioners, not the Council.

A county may not exercise a power that is expressly denied by statute, or expressly granted to another entity. *See* Ind. Code § 36-1-3-5. As discussed above, Ind. Code § 5-11-10-1.6(d) requires the auditor to issue a warrant if it meets the requirements of that section. For purposes of your inquiry, it is not necessary to determine whether or not this is an express statutory denial of the county’s power to impose additional conditions on the auditor’s authority to issue warrants. Even if the county has the power to impose those conditions, the County Council’s Ordinance is ineffective under the home rule act because the Council is not the executive body of the county.

The County Council is the fiscal body of the county pursuant to Ind. Code § 36-1-2-6. The Council sets certain salaries and makes appropriations for expenditures based on budget estimates filed with the Council. *See* Ind. Code § 36-2-5-11. It is understandable that the Council would wish to have some oversight of the use and management of those appropriations. However, the statutory scheme for county fiscal matters does not grant the Council a role in determining how warrants are issued, as long as there is an available appropriation for the funds in the year the warrant is drawn.

¹ In a county subject to Ind. Code Chpt. 36-2-3.5 (certain counties with populations exceeding 200,000) or Ind. Code Chpt. 36-3-1 (Marion County), the legislative body must adopt the ordinance. Knox County is not subject to either of those chapters.

CONCLUSION

The Knox County Council does not have the authority to enact an ordinance governing the county auditor's issuance of warrants for payment of claims. Any ordinance governing the payment of claims must be enacted by the Knox County Board of Commissioners, and it must be consistent with Ind. Code § 36-1-3-5 and Ind. Code § 36-1-3-8.

Sincerely,

Gregory F. Zoeller
Attorney General

Donna Stolz Sembroski
Deputy Attorney General