

January 9, 2013

OFFICIAL OPINION 2013-2

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

RE: Disbursement of county funds with county council appropriation

Dear Mr. Hartman:

You requested an opinion from our office regarding the disbursement of county funds without an appropriation by the county council. Specifically, you asked whether a board of county commissioners, by use of home rule powers in Ind. Code Chpt. 36-1-3, may adopt an ordinance that would be sufficient to be an exception under Ind. Code § 36-2-5-2(b) that would allow a county to disburse monies without appropriation by the county council. Your opinion request included an example of a local ordinance that purports to authorize ongoing disbursement of funds from an Information Technology Fund without county council approval or appropriation. We have reviewed the relevant authorities in this regard and concluded that, despite the fact that local governments have broad home rule powers, such an ordinance is not permissible under Indiana law.

BRIEF ANSWER

Ind. Code § 36-2-5-2(b) provides that “money may be paid out of the [County] treasury only under an appropriation made by the [County] fiscal body, except as otherwise provided by law.” A board of county commissioners may not create an exception to the appropriation requirement in Ind. Code § 36-2-5-2(b) by passing an ordinance under home rule powers granted by Ind. Code Chpt. 36-1-3. Such an ordinance is not within the scope of exceptions “otherwise provided by law.”

ANALYSIS

Indiana’s Home Rule Act, codified at Ind. Code Chpt. 36-1-3, grants to units of local government “all the powers they need for the effective operation of government as to local affairs.” Ind. Code § 36-1-3-2. The Home Rule Act abrogates Indiana’s long-standing rule of strict construction in reviewing the authority of local units of government. Ind. Code § 36-1-3-3.

The Office of the Attorney General has issued previous opinions recognizing a local unit’s authority to act under the Home Rule Act (*see, for example*, 2003 *Ind. Att’y Gen. Op.* No. 01: “Distribution of County Option Income Tax”; 2003 *Ind. Att’y Gen. Op.* No. 06: “Smoking bans”; 2003 *Ind. Att’y Gen. Op.* No. 07: “Political subdivision establishment of Rainy Day Funds”). We cannot conclude, however, that the proposed ordinance at issue here is authorized by the Home Rule Act.

Ind. Code § 36-2-5-2(b) provides that the “[t]he county fiscal body shall appropriate money to be paid out of the county treasury, and money may be paid out of the treasury only under an appropriation made by the fiscal body, except as otherwise provided by law.” The appropriation requirement in Ind. Code § 36-2-5-2(b) is a state check on the expenditure of public funds by county government. *See Board of Commissioners of Allen County v. State ex. rel Lockhart*, 23 N.E.2d 494, 498 (Ind.1939). As such, “the system [of appropriations] should not be set aside nor curtailed except by a *statute* which clearly shows such intention of the *legislature*.” *See Id (emphasis supplied)*. An ordinance passed by a county board of commissioners cannot be said to represent the intention of the state legislature.

The state legislature has in fact enacted two exceptions to the appropriations rule in Ind. Code § 36-2-5-2(b). One for food stamp payments made under Ind. Code § 12-13-7-6(c) and one for incentive payments paid to counties for the enforcement and collection of child support rights under Ind. Code § 31-25-4-23. There is currently no exception in state law for the purchase and maintenance of IT system equipment. In turn, the Clark County Board of Commissioners cannot avoid the appropriations requirement by passing Ordinance No. 30-2012. An appropriation is necessary for the subject expenditures.

Supposing the phrase “unless otherwise provided by law” is ambiguous as to what law it pertains, courts will interpret the words in a “logical manner consistent with the statute’s underlying policy and goals.” *See Fort Wayne Patrolmen’s Benevolent Association, Inc. v. City of Fort Wayne*, 903 N.E.2d 493, 497 (Ind. Ct. App. 2009). In cases of ambiguity courts will “presume the legislature intended logical application of the language used in the statute, so as to avoid unjust or absurd results.” *See id.* Here it would be absurd to interpret “unless otherwise provided by law” to mean an ordinance passed by a county board of commissioners. If this were the interpretation applied to Ind. Code § 36-2-5-2(b) counties could categorically avoid the appropriation requirement by passing exceptions for every item in the county budget. This would not promote the intent of the legislature in passing Ind. Code § 36-2-5-2(b) as a check on the expenditure of public funds by county government through a system of appropriations.

Finally, the revolving fund established by Ordinance No. 30-2012 conflicts with the appropriation requirement in Ind. Code § 36-2-5-2(b). Under Indiana law, a local ordinance that conflicts with a statute passed by the General Assembly is void. *See e.g. City of Gary v. Indiana Bell Telephone Co., Inc.*, 732 N.E.2d 149 (Ind. 2000); *Uhl v. Litter’s Quarry of Indiana, Inc.*, 384 N.E.2d 1099 (Ind. Ct. App. 1979); *State v. Winterrowd*, 91 N.E. 956 (Ind. 1910). This limitation on the exercise of authority by a local unity of government is also recognized in the Home Rule Act, which provides that “[i]f there is a constitutional or statutory provision requiring a specific manner for exercising a power, a unit wanting to exercise the power must do so in that manner.” Ind. Code § 36-1-3-6(a). As discussed above, Ind. Code § 36-2-5-2(b) requires appropriations to be made by the county fiscal body, so efforts by the Clark County Board of Commissioner to change this statutory requirement must fail.

CONCLUSION

An ordinance enacted by a board of county commissioner purporting to authorize expenditures from an information technology fund without associated appropriations by the county council is not permissible under Ind. Code § 36-2-5-2(b). Such an ordinance is not within the possible exclusion from the general rule requiring appropriation by the county fiscal body (the county council) expressed in the phrase “except as otherwise provided by law.” Neither is the ordinance sanctioned under the Home Rule Act inasmuch as its terms conflict with the statutory requirements concerning appropriations under Ind. Code § 36-2-5-2(b). Expenditures may not be made from such a fund unless they have been authorized by an appropriation of the county council.

Sincerely,

Gregory F. Zoeller
Attorney General

Philip Thompson
Deputy Attorney General