

Chapter 4

POWERS AND DUTIES OF COUNTY OFFICIALS

An effective county official not only needs an understanding of his or her own office, but also needs a working knowledge of the duties and responsibilities of the other county offices. This chapter covers the various functions each elected official must perform as a member of the county team.

The most familiar form of government is the division of government into three branches or functions: the executive; legislative; and judicial. Under this model, the concept of separation of powers and a system of checks and balances delineate the various duties among the various branches of government. Unfortunately, county government in Indiana is not organized in accordance with this model. Sometimes it is difficult to discern the areas of responsibility among the various elected officials.

Legislative Functions

Throughout the Indiana Code, the board of county commissioners is variously referred to as the executive body or the legislative body. Under IC 36-2-3-2 the council is defined as the fiscal body. Under IC 36-2-4, both the board of county commissioners and the council are given legislative authority in that they both may adopt ordinances. In all but three of the counties: Lake, Marion, and St. Joseph, the legislative power of the county is divided between the board of county commissioners and the county council. In these three counties full legislative power is vested in the council by

state statute. Under IC 36-2-3.5, other counties may adopt this arrangement if the county commissioners and county council pass identical ordinances.

Despite the definitions (and apart from the three counties that are the exception), the commissioners and council each have certain legislative functions. A discussion of the specific differences in legislative responsibilities requires a lengthy recitation that is beyond the scope of this handbook. As a rule, the council has jurisdiction over fiscal matters and the commissioners have jurisdiction over matters concerning either the exercise of regulatory or administrative powers.

The following generally describes the legislative role of the commissioners and the council in most Indiana counties.

County Commissioners

In most Indiana counties, the county commissioners may adopt ordinances regulating behavior. Specifically, they have authority to pass ordinances in the following broad areas:

- To provide for traffic control. {IC 8-17-1-40}
- To establish minimum housing standards. {IC 36-7-8-4}
- To grant vacation pay, sick leave, paid holidays and other similar benefits to county employees. {IC 5-10-6-1}

- To administer elections in conjunction with the county election board. {IC 3-5 and IC 3-6}
- To incorporate new towns and alter township boundary lines, on petition. {IC 36-6- 1}

In most cases the county may exercise its regulatory powers only in the unincorporated areas of the county. As a general rule, although there are some exceptions, the county does not have jurisdiction to regulate behavior in the incorporated cities and towns of the county. An exception would be the adoption of ordinances restricting smoking as several counties have adopted county-wide smoking ordinances.

The commissioners are the custodians of the home rule powers of the county. Within the scope of home rule, commissioners may adopt and vest themselves with additional regulatory powers. In Lake, Marion, and St. Joseph counties, the county councils are the home rule custodians and have authority to bestow specific, additional powers on the commissioners. (Generally see IC 36-2-2 for duties of the board of county commissioners.)

County Council

The council has the ultimate decision-making power regarding fiscal affairs. The council has authority to view or review fiscal matters, determine proper policy, and set priorities for the allocation and expenditure of county funds.

The General Assembly determines the powers of the county council in this area. Typically these powers include:

- Approving and fixing annual operating budgets of all county government offices and agencies. {IC 36-2-5-7}
- Establishing salaries, wages, per diems, and other compensation for all county officials and employees. {IC 36-2-5-3}
- Fixing tax rates and establishing levies on all county property for the purpose of raising funds to meet budget requirements in conducting county business [IC 36-2-5-11], as well as authorizing the borrowing of money in the form of bonds and notes. {IC 36-2-6-18}
- Appropriating public funds, i.e., authorizing the expenditure of county money by particular officials or departments for specific purposes. {IC 36-2-5-11 and IC 36-2-5-12}
- Authorizing certain purchases or sales of county owned land. {IC 36-1-11-3}

Under IC 36-2-3-6, the county council may employ legal and administrative personnel necessary to perform its duties. (Generally see IC 36-2-3, for duties of the county council.)

Executive Functions

The structure of county government in Indiana does not allow for a focal point of executive and administrative authority in the county. Instead there is a dispersion of executive and administrative power, mainly due to the number of elected county administrative officers, each with statutorily vested powers and duties. Because the chain of command is vaguely defined, the need for developing cooperative attitudes and a spirit of genuine teamwork among all elected officials is extremely important.

This organizational sprawl in Indiana counties calls for mutual appreciation and understanding of the pattern of administrative functions and duties allocated among the various categories of officials. Toward that end, the following subsections summarize the basic executive or administrative functions that the General Assembly has granted to each county elected official.

County Commissioners

The board of county commissioners as a body has a wide range of executive and administrative authority. Among the most important powers are those related to:

- Auditing and authorizing claims against the county. {IC 36-2-6-2}
- Receiving bids and authorizing contracts.
- Controlling, maintaining, and supervising county property including courthouses, jails, and public offices. {IC 36-2-2-24}
- Supervising construction and maintenance of roads and bridges.
- Exercising appointive powers including both the selection of members to fill positions on boards, commissions, and committees, and appointments of certain department heads.
- Planning and implementing strategies for solid waste handling as members of solid waste district boards. {IC 13-21-3-1}
- Serve on the County Board of Finance with County Treasurer. (See Page 36 for more information.)

Meetings and Transactions of Business

Although the law requires the board of county commissioners to meet only once each month, the demands of public business may require more frequent sessions. {IC 36-2-2-6} These meetings must be open to the public and conducted on a regular basis. The auditor of the county serves as the official record keeper for proceedings. {IC 36-2-2-11} When only two members of the county board attend the meeting and there is no consensus, the board must defer final actions until all of the members are in attendance. {IC 36-2-4-6} The Indiana Open Door and Public Access to Records statutes apply to county commissioners' meetings. (See Chapter 6 of this handbook.)

The board of commissioners may call a special session whenever public interest requires it. The commissioners or the county auditor may call a special meeting. If the office of county auditor is vacant, the county clerk may call a special meeting. If the offices of both the county auditor and the county clerk are vacant, the county recorder may call a special meeting. At least six days notice must be given for a special meeting unless there exists an emergency that requires shorter notice. {IC 36-2-2-8} The commissioners may transact business only on those matters for which the special meeting was called.

The commissioners must maintain an office and keep it open on each business day. {IC 36-2-2-10} The commissioners may hold their meetings in a building other than the county courthouse if the county courthouse is not suitable or convenient or if there are other county government buildings available. {IC 36-2-2-9}

Administrative Assistance

With an ever-increasing demand on the time requirements of county commissioners and the increasing complexity of the duties and responsibilities, some county commissioners employ the services of a county administrator as provided for by state law. The administrator holds office at the pleasure of the board and performs day-to-day responsibilities under the direct control of the board of commissioners. The board may also assign to the county administrator the duties of any office or position under its control. The board also may, by resolution, withdraw any of the powers and duties assigned to the administrator. {IC 36-2-2-14}

Auditor

The county auditor must wear many hats. The following attempts to categorize the most important duties of the office.

- **Key Assistant**

The auditor serves as a secretary to the board of county commissioners and the clerk to the county council. The auditor has responsibility for keeping accounts and issuing warrants for the payment of claims against the county. As a result, the board of commissioners, the council and other officials often look to the auditor for day-to-day operational assistance, information and advice. The auditor is responsible for all documents, books, records, maps and papers deposited in the auditor's office.

- **Coordinator of Tax Collection and Distribution**

The auditor is directly responsible for preparing tax duplicates showing the value of property and taxes assessed against each taxpayer. After taxes are collected by the treasurer, the auditor distributes them to the governmental units and agencies for which they were collected. As a part of the tax

function, the auditor must also prepare plats that show the ownership and assessed valuation of each parcel in each township in the county. The plats must contain information prescribed by the Department of Local Government Finance (DLGF) and must be kept current. If property taxes become delinquent, the auditor must prepare a delinquency list in preparation for the offering at public sale of the parcels owing delinquent property taxes.

- **County "Comptroller"**

Many of the above functions have to do with controlling public funds. In keeping accounts and issuing warrants, the auditor must develop financial analysis and cash flow projections and assist with budget preparations. The auditor is the principal financial officer in county government and is defined under IC 36-2-9-2 as the fiscal officer of the county. (Generally see IC 36-2-9 for duties of the county auditor.)

Treasurer

In some states, the person who performs the duties performed by county treasurers in Indiana is referred to as the tax collector. That title perfectly describes the primary duty of the county treasurer. Not only is the county treasurer responsible for collecting taxes, but in the case of delinquent taxes, the treasurer may order the sale of real property to pay delinquent taxes. The treasurer also receives distributions of local income and other taxes that are collected by the state.

- The treasurer is responsible for the collection of some taxes imposed by state law on behalf of the state and also has custodial and investment responsibility for all taxes and other revenues collected by county government. Together with the auditor, the treasurer insures the proper distribution of funds. The county

treasurer serves as treasurer ex officio to the board of hospital trustees in some counties. The Treasurer also serves on the County Board of Finance with the County Commissioners. See Page 36 for more information. (Generally see IC 36-2-10, for duties of the county treasurer.)

Assessor

The primary duties of the county assessor are to:

- Certify assessed values to the county auditor. {IC 6-1.1-4-24}
- Serve as the secretary of the county property tax board of appeals {IC 6-1.1-28-1}, the entity that hears all property tax assessment appeals within the county.
- Perform the duties of a township trustee-assessor who fails to perform his or her duties in a timely manner. {IC 36-2-15-5(b)}
- Select the assessment computer system used by all the assessing officials in the county.
- Discover and assess property omitted by the township assessor and trustee/assessors.
- Equalize assessments in the county.
- Advise and instruct all township assessors in his or her county as to their duties.

Legislation adopted by the 1997 General Assembly rearranged some of the assessing duties of the county assessors, township

assessors and township trustee/assessors, giving county assessors some additional authority. The same legislation also reformulated the county board of review and renamed it the county property tax board of appeals.

The county assessor works closely with the Department of Local Government Finance, which adopts the rules for assessing of property in Indiana. (Generally see IC 36-2-15, for duties of the county assessors.)

Surveyor

The surveyor must prepare, maintain, and keep in his or her custody a legal survey record book showing maps of each section, grant tract, subdivision or group of such areas in sufficient detail so that the approximate location of each such legal survey may be shown. {IC 36-2-12-11}.

If the surveyor is registered as a land surveyor under IC 25-21.5, he or she maintains a corner record book. If the surveyor is not a registered land surveyor, the surveyor, with the approval of the commissioners, appoints a registered land surveyor to keep the corner record book. A county surveyor registered as a land surveyor under IC 25-21.5 or IC 25-31, is entitled to compensation at a rate one and one half times as much as a surveyor who is not licensed. {IC 36-2-12-15(b)}

If the surveyor is a civil engineer, the surveyor supervises all civil engineering work of the county. If the surveyor is not a civil engineer, the commissioners must appoint a civil engineer for each project. {IC 36-2-12-8}.

In addition, the surveyor supervises all legal ditch construction, serves as an *ex officio* member of the county drainage board and the county plan commission. (Generally see

IC 36-2-12, for duties of the county surveyor.)

Coroner

The chief responsibility of the coroner is to determine the manner of death in cases involving violence, casualty, unexplained or suspicious circumstances or when the person has been found dead. {IC 36-2-14-6}

When notified of a death under any of the above circumstances, the coroner must alert and obtain the investigative assistance of the law enforcement agency having jurisdiction in the area.

When the coroner determines the cause of death, the law requires the coroner to file a report of his or her findings with the local health officer. If an autopsy is necessary, the coroner **must** employ a qualified physician to conduct it. Additional reports of the cause of death must be filed with the clerk of the circuit court. A county coroner, who is also a licensed physician is entitled to one-and-one-half times as much compensation as a non-physician coroner. {IC 36-2-14-15} (Generally see IC 36-2-14, for duties of the county coroner.)

Sheriff

The responsibilities of the sheriff include:

- Serving as conservator of the peace. {IC 36-2-13-5}
- Taking care of the county jail and the prisoners confined in the county. {IC 36-2-13-5}
- Feeding prisoners, for which an amount is fixed annually by the State Board of Accounts. {IC 36-8-10-7}
- Administering work release programs. {IC 11-12-5-3}

- Serving as an officer of the courts in the county to deliver service of warrants, subpoenas, and other forms of process. {IC 36-2-13-5}
- Collecting delinquent state income tax or levying on the property of taxpayers for the amount due when a warrant is issued by the Indiana Department of Revenue commanding him or her to do so, and transmitting to the Department of Revenue the amount collected. For the sheriff's services in collecting and remitting otherwise uncollectible state tax delinquencies, the sheriff is entitled to retain ten percent. {IC 6-8.1-8-3}
- Selling mortgaged property under foreclosure proceedings and executing real estate deeds of property sold under execution. {IC 34-55-6}
- Conveying prisoners to correctional institutions.

Any sheriff has the authority to request the aid of any other sheriff and/or deputies and assistants in the state in an emergency situation or for specific assignments that require specialized personnel. The sheriff has complete hiring authority over the positions of chief deputy and prison matron. The sheriff may hire other deputies only from a list of candidates prepared jointly by the sheriff and merit board. {IC 36-8-10-10}

A sheriff may appoint a person as special deputy if the person is employed by a governmental entity or a private employer, if the nature of the person's employment requires the person to have the powers of a law enforcement officer. The sheriff shall fix the training, education and experience requirements for a special deputy, and the special deputy must meet the minimum requirements of IC 36-8-10-10.6(b). The

sheriff may also appoint reserve deputies, if the county commissioners have enacted an ordinance specifying an authorized number of reserve deputies. {IC 36-8-3-20}

If requested by the county commissioners or county council, the sheriff or a county police officer must attend the meetings of those respective bodies. {IC 36-2-2-15(d) and IC 36-2-3-6}

There are various ways a county may set the compensation of the county sheriff. Under IC 36-2-13-2.8, the county may pay a sheriff from the general fund as it does other county officials. Under this method of compensation, there is a maximum salary that is paid from the county general fund. The level of the maximum salary depends on the population of the county. Under this provision, in addition to the compensation paid from the county general fund, the sheriff may retain the sheriff's tax warrant collection fees under IC 6-8.1-8-3.

Under IC 36-2-13-2.5, the county and the sheriff may negotiate a contract. Under this provision, the sheriff may not retain the sheriff's tax warrant collection fees under IC 6-8.1-8-3, or a profit from the feeding of prisoners. Prisoner meals must be paid from an appropriation from the county general fund or an allowance under IC 36-8-10-7. If the sheriff pays for prisoner meals from an allowance under IC 36-8-10-7, the sheriff must transfer any excess funds to the county general fund. In addition, some sheriff expenditures from the commissary fund must be reviewed by the county council under IC 36-8-10-21.

If a county elects to compensate a sheriff in a manner other than the methods provided for under IC 36-2-13-2.5 or IC 36-2-13-2.8, it should be aware that there might be unintended pension contribution and income

tax consequences. However, under legislation adopted in 1997, the county may limit the pension consequences by adopting an ordinance limiting the definition of average monthly income for pension purposes. {IC 36-8-10-12.1} (Generally see IC 36-2-13, for duties of the county sheriff.)

Recorder

The county recorder's function is to maintain permanent public records involving a wide variety of instruments. These documents detail transactions involving real estate, mining, personal property, mortgages, liens, leases, subdivision plats, military discharges, personal bonds, etc. {IC 36-2-11-8} Generally, all of these instruments are recorded either for giving legal public notice of their existence or for safekeeping and future reference.

The recorder maintains and preserves all legal documents affecting title to real property. These records are the legal basis for determining ownership. The degree with which the recorder fulfills his or her responsibilities ultimately forms the legal foundation for the institution of private property. The recorder is a member of the county commission on public records, which has authority over the preservation or disposition of all public records maintained by the county. {IC 5-15-6}. (Generally see IC 36-2-11, for the duties of the county recorder.)

Judicial Functions

The county level court system is at the very heart of all judicial functions in Indiana. All county level courts are part of the network of the state court system. The Governor has the authority to fill all elected court vacancies.

The circuit courts in Indiana are courts of original jurisdiction. They are presided over by judges who serve for a term of six years. Circuit court judges, like judges of all state courts, must be admitted to the practice of law. In addition to the circuit courts, the General Assembly has created superior courts, which in most cases, handle the same types of cases that the circuit courts handle. In some cases, counties have more than one superior court.

In 1975, the legislature replaced the existing minor courts (the justice of the peace courts, and most city and town courts) with a combination system in which approximately one-third (1/3) of the counties were assigned a circuit court. Today, all but four counties have their own circuit court.

The court system is a vital part of the system of local governance. However, the function and structure of the court system is much too broad and complex to handle sufficiently in this handbook. There are, however, two county elected offices that exercise a wide range of judicial functions that are included. They are the prosecuting attorney and the clerk of the circuit court.

Prosecuting Attorney

Although elected by voters in each judicial circuit, the prosecuting attorney represents the state of Indiana, and prosecutes violators of state statutes in all courts having criminal jurisdiction within the judicial circuit. This office is not strictly a county office. The prosecutor is elected to represent a judicial circuit. There are two judicial circuits that have boundaries larger than a single county.

The original authority for the prosecutor is found in Article 7, Section 16, of the Indiana Constitution. However, the General Assembly in statute has established the specific duties and responsibilities of the

prosecutor's office. (Generally see IC 33-14, for duties of the county prosecutor.)

Clerk of the Circuit Court

Article 6, Section 2, of the Indiana Constitution establishes the office of the clerk of the circuit court. The General Assembly, by statute, has assigned responsibility for many of the administrative functions of the county courts to the clerk of the circuit court, which is sometimes referred to as the county clerk. In addition, the General Assembly has assigned other non-court related governmental duties to the office of the clerk. The following is a brief description of the functions of the clerk of the circuit court.

Judicial Related Functions. The clerk, or a deputy, must attend all sessions of the court, and keep a record of all judgments, orders and decrees of the court. The clerk also must certify and attest to complete transcripts of court proceedings involving title to property, the imposition of prison sentences and in all court cases where a complete court record is required. The clerk maintains all records of pleadings, motions, papers, evidence and court rulings of the court. The clerk may grant motions and application for process, such as for the enforcement and execution of previous orders of the court, judgments by default and other proceedings that do not require the order of the court. These actions of the clerk, however, are subject to review by the court.

The clerk receives complaints and initial pleadings in matters brought before the court. The clerk places cases on the court docket and prepares, under direction of the judge, calendars of cases awaiting trial. The clerk also issues summonses and subpoenas to witnesses ordering them to appear in court. The clerk receives payment of fines

and money judgments levied by the court. In the case of a money judgment, the clerk pays the money to the person or entity entitled to the judgment. In recent years, the collection of child support has become a major responsibility of the clerk's office. The clerk does not collect a tax judgment, which is the duty of the county treasurer.

The clerk charges and receives court costs and fees (or clerk's costs) in connection with court actions or other legal business and service of the court. The clerk receives fees for making transcripts of records when a person is convicted, when a will is probated, and when other court business is transacted. The clerk prepares budget estimates for all courts of which he or she serves as clerk. They are submitted to the county council after review and approval of the respective judge.

Election Related Functions. The clerk serves as an *ex-officio* member and secretary of the county election board and as a member and clerk of the county board of canvassers. The clerk appoints the other members of the county election board and the board of canvassers. These appointments must be made from each of the two major political parties and from nominations filed in writing by the county chairs of the two major parties. The clerk receives filings of candidacy from persons seeking certain elective public offices and issues certificates of election to successful local candidates except in the cases of constitutional officers, who receive their commissions from the Governor.

The county clerk serves as the voter registration officer in all counties having a population of less than 125,000 persons that do not have a board of voter registration. Serving in this capacity, the clerk has full charge and control of the process of

registering voters in the county, including certification of deputy registration officers. Counties having a population of 125,000 or more must have a board that performs these functions. {IC 3-7-12-3}

Other Administrative Functions. The clerk also performs certain services to the public that are not directly or obviously judicial functions, but concern legal or quasi-legal affairs. These include the issuance of various licenses and certificates such as: marriage licenses, licenses for distress sales, and the registration of bail agents. Clerks may issue hunting and fishing licenses. Clerk's fees are charged for these services. The clerk may also solemnize marriages; the clerk is not allowed to accept payment for this service. In the future the clerk may be allowed to collect a fee for this service. (Check for updates to the Indiana Law during sessions of the Indiana General Assembly.) The clerk may administer oaths, including the oaths of office for county officials. (See generally IC 3-7-27 and IC 33-17-1 for duties of the county clerk.)