

Indiana Advisory Commission on Intergovernmental Relations
Wednesday, December 16, 2009
9:00 A.M. – 11:30 A.M.

Indiana State Teachers Association Conference Center
150 W. Market St., Second Floor
Indianapolis, Indiana

MINUTES

CALL TO ORDER/WELCOME

Chair Beverly Gard called the meeting to order at approximately 9:10 a.m. She welcomed the group (see Attachment A) and asked the members in attendance to introduce themselves. She also had the presenters and other interested parties introduce themselves.

MEETING AGENDA

- Call to Order/Welcome Chair Beverly Gard
- Approval of Minutes of November 16, 2009 Chair Beverly Gard
- Presentation: State/Local Alternative Dispute Resolution John Krauss
Attorney General Greg Zoeller
- Discussion: State/Local ADR Chair Beverly Gard
John Krauss
- Presentations: Local Government Reorganization Matt Price (Zionsville)
Eric D. Kelly (Muncie/Delaware County)
Pat Sherman (Greenwood/White River
Township)
Steve Schaefer (Evansville/Vanderburgh
County)
- Discussion: Local Government Reorganization Chair Beverly Gard
John Krauss
- Presentations: Federal Stimulus Spending Cris Johnston, Office of Management and
Budget
Jim McGoff, Indiana Finance Authority
Gregg Delp, USDA Rural Development
- Discussion: Federal Stimulus Spending Chair Beverly Gard
- Adjournment Chair Beverly Gard

APPROVAL OF MINUTES OF NOVEMBER 16, 2009

Senator Gard asked the commission to review the minutes from the previous meeting.

Larry Breese made the initial motion to approve the minutes. The motion was seconded by Sara Arnold. The motion carried by unanimous vote.

PRESENTATION: STATE/LOCAL ALTERNATIVE DISPUTE RESOLUTION

John Krauss explained that the proposal to establish a alternative dispute resolution (ADR) program for resolution of local government claims against or by the state had been discussed for the last three or four years starting with the previous attorney general. He introduced Attorney General Greg Zoeller. Mr. Zoeller explained the current proposal and indicated that intergovernmental dispute resolution can mitigate the costs of resolving such claims. He had come to the IACIR for their thoughts and potential buy-in (Attachment B).

Disputes are infrequent between the federal government and the states. These disputes usually revolve around environmental issues and regulation, land, and, in some cases, constitutional disputes. In those cases, both the federal government and the state governments have sovereignty, as established in the U.S. Constitution. Disputes between states also involved two sovereign entities. Indiana local governments are creations of state government. Disputes between state government and local governments are disputes between a sovereign entity and a subordinate entity.

Disputes between the state of Indiana and its subordinate local governments are funded by tax dollars and are a great expense. It is financially important to limit public entities that challenge the sovereign and to resolve the dispute whenever possible without going to court.

Representative Sheila Klinker asked about what tools are included as part of alternative dispute resolution.

Mr. Zoeller indicated that ADR includes mediation and mini-trials. In a recent mini-trial, the parties agreed to resolve. The entire resolution process took six months and it was much less expensive than traditional litigation.

He indicated that one cost cutting measure has been to establish a more direct relationship between the Attorney General's Office and state agencies. Currently, there are 148 attorneys in the Office that are available to agencies. The Indiana Department of Environmental Management is the agency that received the most challenges from local governments. Costs have been managed establishing a direct relationship between IDEM and the Attorney General's Office. 14 attorneys are assigned directly to IDEM. Commissioner's Orders are the most litigated area in IDEM. These lawyers now draft orders they may eventually have to defend. The direct relationship has reduced litigation on Commissioner's Orders by one-third. Mediation training for state attorneys also mitigates the potential cost of litigation.

He suggested that a number of other states are far ahead of Indiana regarding these solutions.

The Attorney General proposed as part of his upcoming policy agenda to focus on ADR because of the budgetary impact and better results. With ADR, costs are cut, destinies are controlled, and relationships are maintained.

Mr. Krauss indicated that Mr. Zoeller is a certified mediator, perhaps the first elected Attorney General to hold those credentials in Indiana. He indicated his support for adding this issue to the work program of the IACIR. ADR can be applied to conflicts with better results. Judges are bound to apply the law. They

do not have the latitude to shape creative solutions. ADR allows parties to work out their differences with less likelihood of ruining ongoing relationships and achieve mutually acceptable results.

Senator Gard asked what kind of legislation Attorney General Zoeller would like to see.

The Attorney General suggested the Tort Claims Act was a good start. The law gives the State of Indiana the opportunity to see the claim and pay if necessary. Costs were \$300 to \$500 million and are now capped at \$700,000. Another option would be to prohibit litigation until a local government has utilized an alternative remedy and failed.

Mr. Krauss added that if someone sues the state there is nothing that requires them to first use alternative dispute resolution. Texas has required ADR. The United States Postal Service requires the dispute resolution process and now has a 95 percent success rate.

Mayor James Fleck asked about the role the Attorney General's Office would play in the proposed new system.

Mr. Krauss noted that the Indiana Supreme Court and the Chief Justice advocate ADR because it serves the needs of people and saves money. It is a tool that has worked well with family dispute resolution. Formalizing additional requirements for ADR will require that additional attorneys be trained in ADR. The Supreme Court Continuing Legal Education (CLE) Commission has provided regular training on ADR. He indicated that, in Texas, the University of Texas Law School runs the state ADR program. With the Attorney General leading, a good program could happen in Indiana.

Mr. Zoeller clarified that he was not suggesting that the Attorney General's Office would serve as the mediator. That likely would raise questions about conflict of interest.

Senator Gard noted that she is on the board of the Policy Consensus Initiative, [<http://www.policyconsensus.org/>] at Portland State University. The board is made up of sitting and retired executive and legislative officials. A fellow member of the PCI Board runs the Texas ADR program. Maine and Oregon also have strong programs. She hoped that the concept could be expanded to help resolve conflicts in the Indiana General Assembly.

Mr. Krauss indicated that a successful ADR program would require leadership to establish and to maintain.

Senator Gard asked about the scope of the training program at the Indiana University Law School program.

Mr. Krauss indicated that the scope of the program at IUPUI is a 40-hour course for third year law students, judges, and town attorneys, private trial lawyers, etc. It produces about 100 certified mediators a year. He indicated that the IU Law School would be receptive to providing additional training and potentially hosting the ADR program.

Senator Gard promised to email more information regarding the Policy Consensus Initiative.

Larry Hesson indicated that, as an attorney, he has participated in the legal process as a mediator, as well as in binding arbitration and non-binding arbitration. He suggested the emphasis should be on requiring ADR because mediator/trial rule requirement mandates are not sufficient.

PRESENTATION: LOCAL GOVERNMENT REORGANIZATION (ZIONSVILLE)

Senator Gard introduced the next topic, the current status of reorganization efforts. She introduced Matt Price, Town Council President, Town of Zionsville.

Mr. Price provided an update on the reorganization effort between Zionsville and Eagle and Union Townships in Boone County. The consolidation became effective January 2, 2010. The resulting local government matches the school district boundaries. The reorganization allows the collective area to chart a future course for land use and economic development.

The reorganization plan was adopted in 2008. They chose to continue as a town. The plan was adopted by voters in the fall of 2008 with about 80 percent approval in Zionsville, about 80 percent approval in Eagle Township, and about 60 percent approval in Union Township. A transition committee has been at work since the referendum. This group was charged with resolving the additional details required to complete the reorganization. The last steps will be taken by the transition committee the night of December 16, 2009.

The new Zionsville will have two distinct service areas, town and rural with two tax rates. The new town will enter into an interlocal agreement with the county to continue to provide police services in the rural area. The new town council is made up of the previous town councilmembers with representatives from the townships Poor relief, cemeteries and animal control folded into the town.

Senator Gard asked about the challenges that have arisen and any suggested changes.

Mr. Price indicated that 2006 HEA 1362 presents both opportunities and challenges. The statute provides significant flexibility regarding the resulting reorganized entity. On some issues more certainty would be helpful. One particularly challenging issue was planning and zoning. The old town of Zionsville was 12 square miles and the new entity will be 52 square miles. The current planning and zoning statute limits plan commissions to seven members. The committee would like to expand the membership but fears legal challenge. More guidance is also needed about budgeting post-reorganization. If the new town adopted a lower levy, it would have to sacrifice county option income tax.

Tonya Galbraith asked about whether the reorganization area has only one town. She queried about what would happen if there was another town within the area.

Mr. Price indicated that Whitestown has some territory in Eagle Township. The reorganization agenda was driven by common interests regarding land use and economic development. The primary purpose was not efficiency. Reorganization did not reduce the tax burden.

Representative Klinker inquired about how the reorganization would affect the school district.

Mr. Price indicated that there has been no effect on the school district thus far.

Senator Deig asked about whether the tax caps influenced the reorganization and what process was used to gain public support for the reorganization.

Mr. Price indicated that the reorganization committee completed their report in late 2007/early 2008. It took six months to persuade the three local governments to adopt, and three months of voter education. Zionsville and the school district have been affected by the tax caps. The town has had to dip into reserves money as a result of the tax caps. They remain in an enviable position because of economic development and good money management.

Representative Jacque Clements asked about how the individual levies were affected and whether the trustees were re-elected.

Mr. Price indicated that as of January 2, 2010, the townships will no longer exist. The trustees have been added to the town council. Both of those individuals were involved in the process. Levies went down in Zionsville and Eagle Township and up slightly in Union Township. The merger reset the levy; it was reduced.

Representative Clements indicated that the distribution of county option income tax has been an issue.

Senator Boots asked about any savings and whether their really were three tax rates because of legacy debt.

Mr. Price indicated that there will be three tax districts: town/urban, rural Eagle, and rural Union. Debt stays with the entity that incurred the debt. Land within the rural areas can be annexed into the urban area over time.

Mr. Price indicated that the Zionsville tax rate will be about 25 percent lower. Long term savings are not as certain, but leaders are hopeful. There is benefit in government is more understandable to the public as suggested by the Kernan-Shepard study. Citizens will now know who to hold accountable.

Cris Johnson congratulated Zionsville on accomplishing the reorganization and asked about how poor relief and fire protection were treated in the reorganization.

Mr. Price indicated that poor relief would be administered by the clerk treasurer. Fire protection had already been combined effectively with the formation of a fire territory and a contract with Union Township.

Mr. Hesson asked about the cost of the reorganization work and responsibility for covering the cost.

Mr. Price indicated that each government allocated \$10,000 for the study. The committee gave back \$25,000. The funding allocated for the transition committee was similar. Most of that money was spent. The costs were not prohibitive. Both groups were populated with talented members.

Representative Tom Saunders asked about how roads were addressed in the reorganization.

Mr. Price indicated that the new town will provide maintenance in the urban service district. The county will maintain the rural service area through a contract.

Linda Williams asked if the clerk treasurer was also assigned trustee duties such as indigent burials, weed control, and fence disputes. She also asked about whether the reorganization plan was available prior to the referendum.

Mr. Price indicated that weed control was assigned to the town parks department. The referendum question was backed by a 20 page plan and PowerPoint.

More staff may be needed in the future, i.e. building inspectors. This reorganization makes for more streamlined government, better tax rate management, and improved growth.

PRESENTATION: LOCAL GOVERNMENT REORGANIZATION (GREENWOOD/WHITE RIVER TOWNSHIP)

Senator Gard introduced Pat Sherman. Mr. Sherman was the chairman of the Greenwood/White River Township Reorganization Committee.

Mr. Sherman provided an update on the reorganization effort in Johnson County. The Zionsville effort provided a good template for subsequent efforts. The reorganization process began in December 2008. As of the December 2009 IACIR meeting, the resulting reorganization plan had passed first reading before the Greenwood City Council.

Center Grove is the largest incorporated area in Indiana and is adjacent to Greenwood and Bargersville. Greenwood approached Bargersville to ask them to be a part of the reorganization planning. They declined. If passed by the voter, a consolidated Greenwood and White River Township will be the sixth largest city in the state.

IC 36-1.5 is very broad and provides a lot of flexibility for participating units. One challenge is the extent to which a reorganization must comply with other laws. Typically, budgeting is done in the year preceding the budget and thus the new City Council post-reorganization cannot set the budget. Tasking the reorganization committee responsible with preparing a budget is not practical.

The Greenwood/White River Township merger establishes two taxing districts: urban and rural. A municipal tax rate is applied to the urban areas. Agricultural lands do not have to pay an additional tax rate.

White River Township is served regarding fire protection by a fire district. There is concern about who will control the fire district money and HR 3615 is nebulous about fire departments. There could be possible litigation.

Reorganization started from a Center Grove grassroots study. The study concluded that there is not enough non-residential assessed value to support a separate municipality.

There has been a lot of controversy regarding tax caps and self-determination. There has been conflict with the town of Bargersville regarding the reorganization and annexation actions. Bargersville has sought to annex potential commercial corridors to offset predominantly residential assessed value.

The relationship of annexation to reorganization is undetermined. The courts have said that first to begin annexation proceedings sets the clock. It is not clear whether this rule would apply to reorganizations alone or in the relationship between annexations and reorganization.

Representative Klinker asked if the reorganization has been approved.

Mr. Sherman indicated that it had not yet gone before the voters.

Mayor Norm Yoder asked about how police protection would be handled.

Mr. Sherman indicated that the county is not structured to serve suburban development. The reorganization plan anticipates a number of new positions to serve the additional population. The reorganization will come with some additional revenues. For example, with more road miles, Greenwood will get additional road funding.

Representative Tom Saunders asked about how big the merging areas were.

Mr. Sherman responded that Greenwood currently had about 47,000 population. With the addition of White River Township it will grow to about 88,000 population. The reorganization plan anticipates the new city being a 2nd class city. Most responsibilities transfer to the mayor. Poor relief will become the responsibility of the city clerk. They anticipate populating various boards and commissions with a mix of city and township residents.

Mr. Sherman indicated that it had been difficult to educate residents about the importance of the reorganization. They do not perceive an impending disaster.

PRESENTATION: LOCAL GOVERNMENT REORGANIZATION (MUNCIE/DELAWARE COUNTY)

Senator Gard introduced Eric D. Kelly, chairman of the Muncie/Delaware County Reorganization Committee.

Dr. Kelly had addressed the IACIR previously. Since then, the original reorganization resolution was found to be defective. To correct that, the process was restarted. The second effort included an expanded committee with appointments from the mayor, county commissioners, county council, and city council. The committee must complete its work by June 2010. The community was ripe for this discussion. Currently the mayor and the city council do not speak.

Dr. Kelly summarized the activity to date (Attachment C). He indicated that he thought that the flexibility built into the reorganization statute was useful.

PRESENTATION: LOCAL GOVERNMENT REORGANIZATION (EVANSVILLE/VANDERBURGH COUNTY)

Jamie Palmer indicated that Steve Schaefer from the Chamber of Commerce of Southwest Indiana was unable to attend the meeting. He sent a written update on the efforts in southwest Indiana (Attachment D).

Senator Gard closed the discussion by saying that there is a growing body of experience regarding reorganization opportunities. There should be a comprehensive list of pitfalls within the statute and a how-to guide developed from these experiences.

PRESENTATION: FEDERAL STIMULUS SPENDING

Senator Gard introduced Cris Johnston. He provided an overview of the funding received from the American Recovery and Reinvestment Act of 2009 (ARRA) and the accompanying administrative processes (Attachment E).

Senator Gard indicated that some states were facing having to pay prevailing wage for the first time.

Mr. Johnson indicated that a number of programs, not previously required to observe Davis Bacon, had to monitor for these issues. This compliance monitoring requires additional staffing.

Senator Gard introduced Jim McGoff of the Indiana Finance Authority.

Mr. McGoff explained that additional funds were made available within the administrative system established for the State Revolving Fund (Attachment F). Typically, SRF offers low interest loans for waste and drinking water. The new monies were intended to fund a combination of loans and grants. These monies came with additional strings attached including a very short window in which to loan/grant the monies. Mr. McGoff also explained the administrative challenges that came with this stimulus money.

Senator Boots asked about how they kept track of ARRA in addition to the full workload associated with the regular SRF programs.

Mr. McGoff indicated that they added staff to deal with the new responsibilities: a Davis-Bacon compliance officer, a controller, and five grant administrators. There is money in the program to pay for compliance monitoring.

Mr. Johnston indicated that some ARRA programs had specific percentages of funding identified for administration separate from programming dollars. For others, the administration had to come out of program dollars.

Senator Gard asked if ARRA dollars are being used to cleanup leaking underground storage tanks.

Mr. McGoff indicated that tanks eligible for ELF trust funds are not eligible for ARRA funds.

Senator Gard introduced Gregg Delp from the U.S. Dept. of Agriculture Rural Development.

Mr. Delp gave a brief summary of the programs that received ARRA funding at USDA (Attachments G and H). USDA RD is administering the ARRA funds with existing staff. He reiterated that the SRF Program, the Indiana Office of Community and Rural Affairs, and USDA Rural Development have worked together over time to maximize the benefit of public funding for drinking water and wastewater infrastructure. This process has continued with the ARRA funds.

ADJOURNMENT

Senator Gard closed the meeting at approximately Noon.

APPROVAL

Minutes were approved on October 12, 2010.