

**Township Assessor Elimination:
A Policy Evaluation and Implementation Report**

**Jointly Prepared by the Office of Management and Budget and the
Department of Local Government Finance**

September 4, 2009

Executive Summary

In HEA 1001-2008, the General Assembly enacted policies that eliminated 995 out of 1008 township assessors. The township assessor was automatically eliminated in all townships with less than 15,000 parcels of real property. In the remaining townships (43 in total), the voters (through a referendum question on the ballot) decided whether to retain their township assessor. In all cases where a township assessor was eliminated, the General Assembly provided that the assessing duties transferred to the county assessor.

The transfer of duties in townships with less than 15,000 parcels occurred on July 1, 2008. The transfer of duties in the townships where voters choose to eliminate their assessors occurred after January 1, 2009. Voters in 30 townships chose to eliminate their assessors, while voters in 13 townships chose to retain their assessors. A map of the remaining township assessors is attached as Appendix B.

Based on survey responses and objective data, we find that County Assessors have outperformed their township counterparts on timeliness, cost, and quality. County Assessors have been 50% more effective in catching up to statutory deadlines. They have been able to do the job for less, finding millions in savings so far. And the convenience and quality of the assessments has increased, based on survey responses.

The implementation of the transition went well overall. Many counties planned ahead for the transition, thus ensuring it went smoothly. Township Assessors overall were cooperative and helpful. Qualified Township Assessors were hired by the County Assessor. A few issues arose that should be considered if pursuing a similar policy. The language regarding the transfer of resources left room for funding disputes. The timing of the elimination did not coincide with the end of elected officials' terms, which led to questions about their employment and salaries. Finally, a lack of public awareness about the transition had negative consequences for some taxpayers.

Despite a few obstacles, the consolidation of assessing duties at the county level has had positive consequences for Hoosiers and the policy has had the desired outcome of a more fair and efficient assessment process.

Policy Evaluation

Overall, the policy of eliminating 99 percent of Indiana’s township assessors has had numerous positive effects, including an increase in the timeliness of assessments, improving the quality of assessments, and decreasing the cost of assessments.

Timeliness

In a survey conducted by the County Assessor Association (See Appendix A), all county assessors were asked the following question: “As a result of the transition of the Township Assessor duties to the County Assessor, do you believe your assessment work will be completed in a more timely manner?” 91% of respondents said yes.

Data collected by the Department of Local Government Finance supports this survey result. The DLGF tracks the total number of days behind that counties are at each stage in the property tax billing cycle. The DLGF data shows improvement over a three-year period for the 59 counties that have completed assessment work for the current year. Those counties were an average of 184 days late in 2007, 125 days late in 2008 (the year of township assessor elimination), and only 25 days late in 2009 (the year after township assessor elimination).

While all counties are improving on timeliness, improvement is happening more quickly in the counties where the township assessors were completely eliminated. A comparison of the total days late in 2009 to that of 2010 reveals how well local officials have done on catching up to the statutory deadlines. Of those that have completed the work for 2010, counties that eliminated township assessors are outperforming the others. They cut their days late by an average of 101 days from 2009 to 2010. The worst performers were the counties in which a township assessor remained. These counties have only cut their days late by 67 days.

	<u>Days</u>	<u>Percent</u>	
	<u>Improvement</u>	<u>Improvement</u>	<u>Count</u>
Township Assessor Eliminated Automatically	102	70%	31
Township Assessor Eliminated in Referendum	94	39%	7
Township Assessor Remains	67	29%	2

All counties are improving on the timeliness of assessments. This is due in large part to increased familiarity with the trending process and to increased efforts by the DLGF toward the goal of on-time billing. However, the data show that we are seeing 50% more improvement from the counties that eliminated all of their township assessors.

Cost

In the same survey, County Assessors were asked about changes in the cost of assessing. 51% of respondents indicated that the overall cost of assessing has gone down as a result of the transition of the Township Assessor duties to the county. 27% said that it was too early to tell if the costs declined. 12% indicated that the costs stayed the same. Only 10% of respondents said that assessing costs have increased after the transition.

It will be at least a year until the state has collected sufficient data from local financial records to analyze the statewide savings from assessment consolidation. However, the open-ended responses to the survey include reports of cost savings, including some creative efficiency gains. Some found savings by contracting out, while others were able to save money by replacing more expensive contracts with in-house work following the consolidation. Others improved service through upgraded technology. Despite the circumstances, the consolidation allowed the County Assessor to take a fresh look at the cost and quality of services and identify room for improvement. The following responses to the survey demonstrate examples of the savings achieved as a result of consolidation:

“In addition to cutting costs from \$130,000 to about half that much, we will also be saving money by using a vendor to do our rolling reassessment. In 2005 the cost to do reassessment was about \$400,000. The township assessors did the job (and it was not on time). Our vendor has contracted to do the job for \$270,000. They are currently 33% done.”

“With funding from the Township Assessors to the County Assessor, I was able to convert old, wooden, broken desks to sturdy, built for technology, work stations for staff and myself. All this was done to help my office facilitate 2011 reassessment in-house. Historically, our county has contracted all reassessment. We now have the capabilities to capture reassessment in-house at a savings of about \$195,000 from the last reassessment.”

“What went well with the transition? Everything, I had planned on this for years. The first year I returned \$95,000, and the next year I saved \$150,000 in my budget.”

“We have decreased our costs as a result of the transition to the county by about 40%...We did not receive any additional people. We got a raise and some part time money, but we had to buy a new software program...”

Perhaps most notably, according to RTV6, the Marion County Assessor has saved \$1.4M per year following the elimination of township assessors. This comes along with increased convenience for taxpayers: “Bowes says he is closing the township offices and replacing them

with satellite offices which will give taxpayers access to all records, as opposed to having to travel to different townships under the old system” (RTV6 Capitol Watchblog, May 18, 2009).

Quality

County Assessors were also asked: “As a result of the transition of the Township Assessor duties to the County Assessor, do you believe the overall assessment results in your county will be better, same, or worse?” 87% of respondents believe that the assessment results will be better. 11% believe they will be the same. 2% responded that it will be worse.

Evaluating the quality of assessments is more subjective than evaluating the timeliness. It is clear that with the work being done by one official instead of many, the procedures will be uniform throughout the county now that assessors have been eliminated. Short of any objective measure of assessment quality, we defer to the opinion of those doing the assessing work. This opinion overwhelmingly supports the conclusion that the quality of assessments has improved as a result of the elimination of township assessors.

One quality increase that is not subjective is an increase in convenience for taxpayers. In some counties, the assessor converted the township offices into satellite county offices with full access to records and a direct line of communication to the County Assessor. For a taxpayer with only one property, the proximity to an assessing office did not change. But those with multiple properties could visit only one location—the most convenient for them—and conduct all their business at the same place. Other taxpayers benefit from being able to visit an assessing office that is close to their place of employment, particularly if they do not work close to their home.

Implementation Report

What Went Well with the Transition

The County Assessor Association survey also asked questions and solicited open-ended comments about the implementation of the transition itself. Overall, the responses indicate that the transition went smoothly, with little or no problems. In fact, 88% of respondents said that everything about the transition went well.

Open-ended responses reveal a high amount of cooperation between the township and county assessors. The Trustee/Assessors who remained only as trustees were helpful in guiding people to the county assessor’s office. Township assessors were helpful in turning over files. While there were a few instances of township assessors refusing to cooperate, the vast majority of township officials were helpful and did not harbor ill feelings toward the county officials.

Many county assessors reported that they interviewed the outgoing township assessors for employment in their office. Many of the talented township assessors were hired, creating a high level of continuity while consolidating the work under one roof. In at least one county, the assessor utilized the expertise of the county human resources department to screen the township officials for employment. The evaluation of township assessors by the county allowed for the good performers to continue their public service.

In the counties with the smoothest transitions, the county assessors utilized previously drawn up plans to facilitate the transition. Some had plans in place for years, while others developed plans in the three months between the passage of HEA 1001-2008 and the July 1 transition date. All of these counties reported that having the plan in place was instrumental to ensuring a smooth transition. On the other hand, county assessors in counties where voters chose to retain some of their township assessors indicated more transitional problems. Since the transition happened immediately after the referendum results, the county assessors had little or no time to put a plan in place prior to the transition. Both types of experiences demonstrate that pre-transition plans resulted in smoother transitions. Further, the more time the parties have to plan for the transition, the more successful it was.

Issues for Consideration

While the majority of transitions went well, the survey responses did indicate a few notable problems with the transition. In the formation of future policies regarding consolidations, the following should be considered in order to ensure smoother transitions.

Financing Decisions. HEA 1001-2008 required the DLGF to adjust the maximum permissible levies of the county and township to reflect the transfer of assessing duties. However, it did not specify that the County Council must appropriate the additional revenue for the Assessor's budget. This resulted in some funding disputes between the Assessors and the Council. There were instances where no additional staff, budget, or office space was approved for the county assessor despite the increase in responsibility. Many of these assessors were able to "make do," but others have found the lack of resources to be detrimental to the timeliness or quality of assessments. Alternately, the legislation could have mandated that the transferred resources be utilized for the intended duty (assessing) or could have provided more formally for the County Assessor to have input into the additional resources that would be needed. An optimal outcome would have allotted to the County Assessor the resources necessary to complete the new work while still providing incentives for the Assessor to consolidate costs and look for savings.

Public Awareness. Many citizens were not aware that the assessing duties had transferred from the township to the county. In general, this meant that citizens would present to the township offices for help with personal property forms or questions about assessments. However, in one county, the lack of public awareness led to a situation in which the County Assessor complained

of potential fraud being committed by the former Township Assessor (see responses in Appendix A). Whether the lack of public awareness results in an extra stop for a citizen or in opportunity for fraud, a transition would be smoother if public awareness were increased. This could be done through a concerted effort on the part of local officials, through a state-run awareness program, or through a state mandate for local officials to provide the information to constituents.

Salary of Eliminated Officials. Local officials were confronted with problems related to the salary and compensation of outgoing township assessors. The DLGF requested an Attorney General opinion to resolve these issues (see Appendix C). The Attorney General opined that (1) the township assessor may continue to receive a salary following the transition, (2) the county council could not decrease or suspend the township assessor's salary for the current fiscal year, (3) that the township assessor could receive a salary for township assessing duties while simultaneously receiving a salary as an employee of the county assessor's office, (4) that the transfer of "employment positions" did not refer to the conversion of the elected township position to a paid county employment position, and (5) that outgoing township assessors were not eligible for unemployment insurance. The Attorney General opinion stated that the legislature had the authority to cut short the elected assessor's term, but had not chosen to do so. Such ambiguity could be resolved in future consolidations by the legislature exercising this authority, or by planning the transition to coincide with the end of the elected officials' terms.

Time to Plan. As stated earlier, counties that had more time to plan had more successful transitions than others who either did not have the time or ability to plan ahead. While the County Assessors did very well in the three months they had to enact the policy change, many have expressed that they would have preferred to have more time to get ready for the transition. A smoother transition would likely result from having at least six months for local officials to plan and if the transition occurs at a natural break in the local process, such as the end of a budget year or an elected official's term.

Conclusion

The enacted policy of transferring township assessing duties to the county has had many positive results. The new consolidated assessing offices are improving on timeliness: they are outperforming the counties with township assessors remaining and have gotten an average of 101 days closer to meeting their statutory deadlines. The new consolidated assessing offices are operating at lower cost. The consolidation of offices has saved the taxpayer's money in most counties. The transition allowed for additional changes to be made to contracts or technology that generated further savings and improved quality of service. The new consolidated assessing offices report that doing the work in one office instead of many has resulted in more consistent and accurate assessments.

The implementation of the transition of power went smoothly in most counties. Township Assessors were helpful and cooperative. Township assessors were widely considered for and often hired to positions in the county assessor's office. The county assessors that put plans in place reported having problem-free transitions, while those with limited time to plan (due to the referendum) had a more difficult experience. A few notable issues arose with the transition. These included county-level disputes about budgets and resources following the transfer of duties, lack of public awareness about the transfer, and ambiguity about the compensation of outgoing public officials.

APPENDIX A: SURVEY RESULTS

The County Assessor Association recently conducted a survey of all of the County Assessor's in the State. As part of the survey, the Assessor's were asked the following questions, with the corresponding results:

1. As a result of the transition of the Township Assessors and Trustee/Assessors last year (either by legislative action or as a result of the referendum), have the overall costs of assessing changed in your county?

Responses: Decreased – 25 (51%)
 Increased – 5 (10%)
 No Change – 6 (12%)
 Too Early to Tell – 13 (26.5%)

2. As a result of the transition of the Township Assessor duties to the County Assessor, do you believe the overall assessment results in your county will be:

Responses: Better – 41 (87%)
 Same – 5 (10.6%)
 Worse – 1 (2%)

3. As a result of the transition of the Township Assessor duties to the County Assessor, do you believe your assessment work will be completed in a more timely manner?

Responses: Yes – 39 (90.7%)
 No – 1 (2%)
 Too Early to Tell – 3 (7%)

4. What problems did you encounter in the transition? How were they resolved?

Responses: No Comment – 1 (7%)
 No Problems – 5 (33%)
 None – 9 (60%)

5. What went well with the transition?

Responses: No Comment – 1 (12.5%)
 All of it/Everything – 7 (87.5%)

Other Comments Made in the Survey:

- The Trustees turned in all work timely. The Trustees were available for any of the questions we may have and they were kind enough to assist any taxpayer with information.
- Personal property was more accurate and on time.

- Some of the farmers still wanted to go to the Trustee. The Trustee did the work and brought it in. One of the farmers did the work wrong resulting in a correction sent – trustee was mad, came in and found out he did it incorrect again and was okay after he left.
- We did quite well with the transition. The only problem was the space in the room for the additional people.
- Township assessors were only assessing mobile homes, so I hired our office help and found some former township assessors to do the work. This worked fine.
- One Trustee/Assessor actually sent letters out to people in his township and notified people that he was willing to continue helping them with filling out their forms....for a fee. HE actually had people going to him and he would fill the forms out, but not sign the form as a normal tax preparer would, and then he would mail the return or have his “clients” mail their own. We know his writing. The upsetting part is that the taxpayers in his township think he has some sort of power over them so the ones who were smart enough to realize that it was no longer his responsibility, still paid him to do it in case they ever “needed” anything from him in the future. Others just weren’t aware enough of what is going on in government and they thought they were supposed to start paying for him to help. Our office did everything short of going door-to-door to help people. We went to every volunteer fire department in the county and had evening hours (4:30 – 8:00)... We also opened the courthouse for two Saturdays from 9 – 4. WE won’t be doing that next year as less than 25 taxpayers took advantage of the extra hours. But, the word is out that the process of coming into the assessor’s office is fast, painless and informative. We feel like our returns are more consistently done and the overall process is much smoother. As far as the Twp. Guy that was charging people, we made sure our forms had a letter in them. Any corrections that had to be made explained that the Assessor’s office helps FREE OF CHARGE. I also complained to the State Board of Accounts and my field rep about it. Aarghhhh!
- The good Twp. T/A’s gently guided their people to our office. They also gave us a heads-up on people that required extra help and many of them are still letting us know about changes they’ve seen in their respective townships. They don’t resent us or the change in the law.
- Since I hired the township assessors to work part time for the county the entire transition went smoothly. They already understood the procedures that were in place. In our county because we had no full time assessors they always turned everything into the county office anyway so not much was different than before. However because the county office is now setting and enforcing all the time lines I do feel we have a more consistent job and a more timely job.
- As a result of the transition of the Township Assessor duties to the County Assessor, do you believe your assessment work will be completed in a

more timely manner? Yes, but I don't attribute it all to losing the township people. I think that we are getting ahead because we are catching up and know more about how to assess at market value. We have also got all of the old years compliant and are only working on 09 pay 10 now and not trying to make the DLGF happy by working on.

- We didn't have any issues. The Township Assessor's Office was already in the same office as the County. We only had one Township Assessor so the transition went very well.
- Personal property was done by the Township Assessors, there were several returns in the wrong taxing district, and duplicates, returns not entered, missing data and their records were not organized. A personal property department was implemented. Having full time employees that are accountable to me enables the returns to be corrected to the right districts. Also, the department located in the same building made it possible with minimal cost to use our CAMA system that includes a personal property module.
- Most of the Township Assessors turned over all the records and supplies that they had in a pleasant manner.
- Did not really have any problems – the worst was getting the interviews completed in time.
- What went well with the transition? The moving of one office into mine. We are still looking at consolidating more offices together. It is a work in progress.
- What problems did you encounter in the transition? How were they resolved? None, we had a plan in place before the July 1st deadline. The only if you want to call it a problem is, the [REDACTED] Twp Assessor I hired still comes to work only about 3 to 4 days a week. I don't always know when she is going to be off. So what can I do, because she is still elected.
- What went well in the transition? Everything, I had planned on this for years. The first year I returned \$95,000, and the next year I saved \$150,000 in my budget.
- What went well in the transition? Just getting use to more claim from the satellite offices still open.
- What went well in the transition? Getting rid of dead weight.
- What problems did you encounter in the transition? How were they resolved? Law suit from the former Twp. Assessor but nothing materialized.
- What went well in the transition? Opened our line of communications along with more consistency and accuracy.
- I THINK THIS IS IMPORTANT AND I FORGOT TO MENTION THIS IN THE SURVEY. IN ADDITION TO CUTTING COSTS FROM ABOUT \$130,000 to about half that much, we will also be saving money by using a vendor to do our rolling reassessment. In 2005 the cost to do reassessment was about \$400,000. The twp assessors did the job (and it

was not on time). Our vendor has contracted to do the job for \$270,000. They are currently 33% DONE.

- We have decreased our costs as a result of the transition to the county by about 40%. I think the results will be about the same. We did not receive any additional people. We got a raise and some part time money, but we had to buy a new software program because ARC no longer has a PP program. Time frame should be about the same. Our trustees/assessors were really good about being on time for the most part. We really didn't have any problems with the transition other than we didn't get the same amount of money that was being paid out the townships transferred to our office. It seems to have worked out pretty well, for the most part.
- The 2010 compensation for the elected township assessors is the only loose end – the county council will have to deal with that one – since the legislature balked.
- Created a Personal Property Department with a Manager and staff which vastly improved the quality of the PP tax administration. Created an IT position to take control of our IT needs which were in the past completely at the mercy of the inadequately staffed and funded County IT Department which still consists of only 3 employees servicing a county of over 60,000 parcels. Finally – phased out 1970s mainframe for tax administration – finally integrated Cama with tax admin – never would have happened here without state mandate. All concerned are still kicking and screaming. Collision of Cama directly with tax admin data set initially populated with main frame export revealed as suspected mass mis-matches and duplicate parcels, a variety of mailing and property addresses for the same parcels etc.
- Everything overall was not bad. The County Council was only problem I had. Not wanting to give me people and money.
- Not having much trouble with the Twp. Assessors, everything went smoothly, out of 20 twp. assessors, I had problems with two.
- I had one trustee that just refused to give us any assistance at all on questions we had in her township, while others were very willing to help us.
- We had for the most part a great deal of cooperation between the townships and the county.
- There have been a large number of small issues that are probably common to a transition of this complexity, but we have, and continue to, work through those issues.
- We had a systematic way of screening and interviewing the employees from the township offices to decide whether to bring them into the consolidated county office. With the great help from the county's Human Resources department, we were able to create a fair process that allowed us to hire the best applicants.
- We set up 4 satellite offices in our county. I paid 4 former twp assessors (currently trustees) clerical rate based on PP count, to be available to help

our farmers complete PP forms. Worked very well. My full time staff traveled to two other locations to be available to our taxpayers. We will do this again next year.

- What problems did you encounter in the transition? How were they resolved? Consolidating and moving all the files into one office. We had help from several local businesses.
- What went well with the transition? We had great cooperation from the commissioners. We used the Twp. office in July while the County office was being remolded. The office was organized and open for business August 1st. Now with all files in one office taxpayers are receiving a more unified information.
- What went well with the transition? The State by taking over the RV'S and other property through the BMV have done a favor for most taxpayers by eliminating the gross inconsistencies prevalent in the townships.
- What went well with the transition? We are not in charge of the data. The worst is that the Council will only allow me to hire 2 part-time people to take the place of 13 Trustees. This is where we might run into meeting the deadline. So far so good.
- We had no problems in the transition.
- Good cooperation and timeliness with Trustee and County Assessor.
- What went well with the transition? Everything because the trustee's in our county only picked up Mobile homes, the county did all the entry and paper work.
- What problems did you encounter in the transition? How were they resolved? We did not have any problems except for the space that we were given but that is our problem with the county Commissioner's.
- What problems did you encounter in the transition? How were they resolved? None, I now have a township office with two full-time people.
- What problems did you encounter in the transition? How were they resolved? NO PROBLEMS TO SPEAK OF. THE FACT THAT A COUPLE TOWNSHIP ASSESSORS WERE NOT HAPPY ABOUT THE CHANGE DID NOT AFFECT OUR OFFICE WORK FLOW.
- What went well with the transition? FOR THE MOST PART, ALL WENT WELL. TIMELINES WERE MET. I HIRED ONE OF OUR TOWNSHIP ASSESSORS AS MY DEPUTY. WITH FUNDING FROM TOWNSHIP ASSESSORS TO COUNTY ASSESSOR, I WAS ABLE TO CONVERT OLD, WOODEN, BROKEN DESKS TO STURDY, BUILT FOR TECHNOLOGY, WORK STATIONS FOR STAFF AND MYSELF. ALL THIS WAS DONE TO HELP MY OFFICE FACILITATE 2011 REASSESSMENT IN-HOUSE. HISTORICALLY, ██████████ COUNTY HAS CONTRACTED ALL REASSESSMENT. WE NOW HAVE THE CAPABILITIES TO CAPTURE REASSESSMENT IN-HOUSE AT A SAVINGS OF ABOUT \$195,000 FROM THE LAST REASSESSMENT.

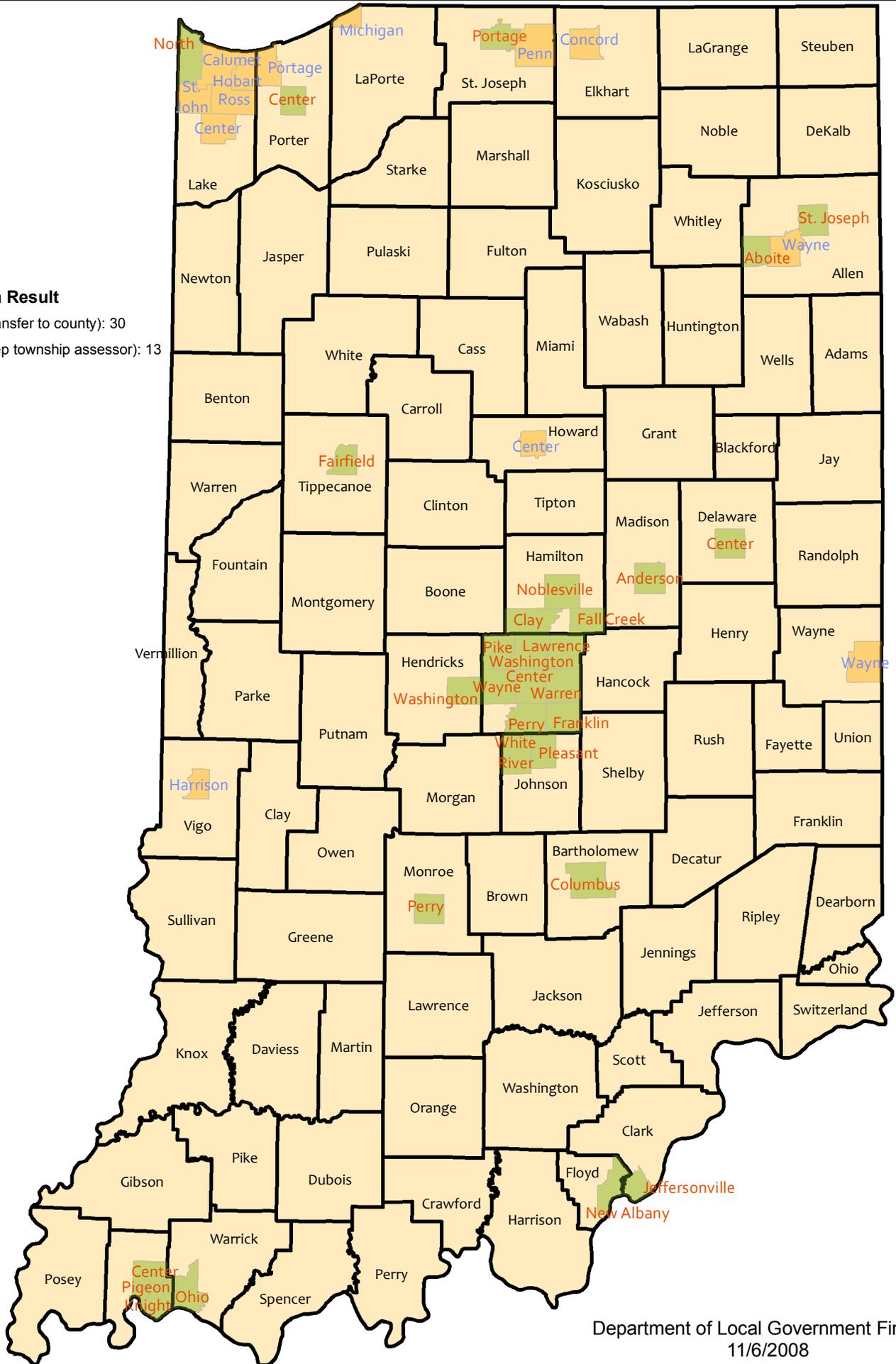
- What problems did you encounter in the transition? How were they resolved? The bad mouthing that the Twp. Assessor and her family have done.
- What went well with the transition? We didn't have to do anything, because she had her office in our office.
- No problems. I did not get a raise or my employee.
- My township people were very helpful.
- What went well with the transition? Everything. When this office was doing 75% of their work for them there wasn't much to go wrong with the transition.
- What problems did you encounter in the transition? How were they resolved? Personal Property took more time than I expected, next year I'm going to hire a part time person to help with forms and mailing.
- What went well with the transition? Since I only had Township Trustees, I didn't have a big transition to go through.
- What problems did you encounter in the transition? How were they resolved? Very short amount of time from the November vote to January 1. County Council didn't transfer the township budgets from the referendum and has made it into a political circus. I have to go every month before them and makes me look like I'm asking for mass money. They are also giving me a hard time budgeting and spending out of the reassessment fund. Also, we need to make sure our vendor or whoever the allocation lists are coming from are accurate.
- What went well with the transition? We didn't lose a step. The majority of the new staff jumped in and did their job as usual, even if something was new. Trending was approved at record pace. Appeals are continuing to go well. As with anything, there's some peaks and valleys and it will smooth itself out.
- What problems did you encounter in the transition? How were they resolved? No problems, we had complete cooperation. The process was very smooth and efficient.
- What went well with the transition? See above. I did hire 2 of the 10 township assessors; they were in the largest townships.

APPENDIX B - C:
MAP OF TOWNSHIP REFERENDA RESULTS and
ATTORNEY GENERAL OPINION

Township Assessor Referendum Results

Referendum Result

- Yes (Transfer to county): 30
- No (Keep township assessor): 13





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May 9, 2008

OFFICIAL OPINION 2008-2

Cheryl A. W. Musgrave, Commissioner
Indiana Department of Local Government Finance
Indiana Government Center North
100 North Senate Avenue N1058(B)
Indianapolis, Indiana 46204

Re: HEA 1001 and Transfer of Assessor Duties

Dear Commissioner Musgrave:

You recently requested a legal analysis of several issues involving the transfer of assessor duties to county assessors under HEA 1001.

Background

Prior to 2008 legislative changes, assessor duties under Indiana Code chapter 6-1.1 were performed by county assessors, elected township assessors, or township trustees. Ind. Code § 36-2-15-5 (2007); § 36-6-5-3 (2007); § 36-6-5-2 (2007). During the 2008 legislative session, assessor duties were modified under House Enrolled Act (HEA) 1001.¹ The 2008 legislative changes are summarized as follows:

- Effective July 1, 2008, township trustee assessor duties are removed. HEA 1001, § 709 (Ind. Code § 36-6-4-3).
- Effective July 1, 2008, the county assessor is required to perform the assessment duties in any township where the number of parcels of real property is less than 15,000. HEA 1001, § 693 (Ind. Code § 36-2-15-5); § 710 (Ind. Code § 36-6-5-1(h)).

¹ Effective April 4, 2008, HEA 1001 became Public Law No. 146-2008.

- Effective January 1, 2009, the county assessor is required to perform assessment duties in any township of at least 15,000 parcels where a majority of the township votes on November 4, 2008, on a referendum to approve the transfer of duties to the county assessor from the township assessor. HEA 1001, § 693 (Ind. Code § 36-2-15-5).
- Elected township assessors may perform assessment duties in a township with at least 15,000 parcels of real property and where the transfer of duties to the county assessor has been disapproved in the referendum to be held on November, 4, 2008. HEA 1001 § 710 (Ind. Code § 36-6-5-1).

Questions Presented and Brief Answers

The Department of Local Government Finance requested a legal analysis of the following issues:

- 1. May an elected township assessor continue to receive pay and benefits after assessor duties have been transferred to the county assessor either by law on July 1, 2008, or referendum on January 1, 2009?**

Answer: Yes. The elected township assessor may continue to receive salary and fringe benefits for the remainder of his or her current term of office. While the legislature had the authority to cut short the elected township assessor's term, it did not. Therefore, the current elected township assessor should continue to perform the statutorily assigned duty of assisting the county assessor in the transfer of records and operations.

- 2. May a county council reduce the compensation of the elected township assessor once the duties have changed?**

Answer: Under sections 36-6-8-10 and 36-2-5-13(a), the compensation of an elected township assessor may not be increased or decreased for the year in which it was fixed.

- 3. May a county or township reduce the compensation of a township trustee who is performing assessor duties once those duties are transferred to the county assessor by law on July 1, 2008?**

Answer: Under sections 36-6-8-10 and 36-2-5-13(a), the compensation of a township trustee who is performing assessor duties may not be increased or decreased by a county council for the year in which it was fixed. Nor may a township board that has supplemented the salary of a trustee assessor under

section 36-6-6-10(d) reduce the salary during the fiscal year for which it was fixed.

- 4. After assessor duties have been transferred to the county assessor either by law or after the referendum, is the elected township assessor still entitled to receive the \$1,000 payment under section 36-6-8-6 after becoming certified?**

Answer: Yes. The elected township assessor is entitled to receive the \$1,000 payment for the duration of his or her term of office, provided that the elected township assessor maintains the certification.

- 5. After assessor duties have been transferred to the county assessor either by law or after the referendum, may the county assessor hire the elected township assessor or trustee assessor as a deputy? Would holding both the position of elected township assessor and deputy be a violation of the prohibition against dual officeholding?**

Answer: The county assessor's deputies are not lucrative officeholders. Therefore, an elected township assessor or trustee assessor may serve as a deputy under the county assessor without violating the prohibition against dual officeholding.

- 6. Is the reference to "employment positions" at HEA 1001, Section 834 a reference to the transfer of the "line item" in the budget or a reference to the transfer of the employee or person?**

Answer: The transfer of "employment positions" is not a reference to the transfer of the elected township assessor as an employee since he/she is still an elected official and not an employee of the county assessor. The reference to "employment positions" under section 834 may also be read more broadly than simply a reference to the transfer of a "line item" in the budget. The transfer of the "employment position" under section 834 will allow the county to create and fund a new position in the county assessor's office to carry out the newly assigned assessing duties.

- 7. May elected officials collect unemployment insurance?**

Answer: No. Employment as an elected official cannot be used to qualify for unemployment insurance benefits under Indiana Code section 22-4-8-2(i)(2).

Analysis

A. Elimination of an Elected Office

The creation and abolition of offices is discussed by Indiana courts:

Offices are neither grants nor contracts, nor obligations which cannot be changed or impaired. They are subject to the legislative will at all times, except so far as the constitution may protect them from interference. 'Offices created by the legislature may be abolished by the legislature. The power that creates can destroy. . . . The term of an office may be shortened, the duties of the office increased, and the compensation lessened by the legislative will.'

Yancy v. Hyde, 28 N.E. 186, 187-88 (Ind. 1891) (citations omitted). The office of elected township assessor is not an office established by the Indiana Constitution and therefore no constitutional question is involved. Ind. Const. Art. 6 § 2, §3.

Non-code provision, HEA 1001 section 832(b), addresses the abolishment of the office of township assessor when assessor duties are assumed by the county assessor either by law on July 1, 2008 or referendum on January 1, 2009. Section 832(b) provides that any township assessor elected before July 1, 2008, may remain in office until the end of the township assessor's elected term. The same holds true for an individual who was selected to fill a vacancy in the office of elected township assessor before July 1, 2008. While serving out the term of his or her office, "the sole duty of the individual is to assist the county assessor in the transfer of records and operations from the township assessor to the county assessor under this act." HEA 1001, § 832(b).

In brief, the legislature has the power to abolish the office of elected township assessor and impose additional duties upon the county assessor. And while the legislature had the power to cut short the elected township assessor's term of office, it did not.² Instead, where assessor duties are transferred to the county assessor, the office of elected township assessor is abolished *after* the expiration of the term for which the current elected township assessor was elected. HEA 1001, § 832(b). The elected township assessor continues to perform the sole duty of assisting the county assessor in the transfer of records and operations. *Id.*

B. Compensation

State law provides that each county council, "*in the manner prescribed by IC 36-2-5*" must fix and appropriate funds to pay the salaries of the elected township assessor or trustee

² Compare *State v. Felger*, 95 N.E.2d 840, 842 (Ind. Ct. App. 1950) (the legislature abolished the office of city treasurer, but only *after the expiration* of the term for each currently elected city treasurer) with *Downey v. State*, 67 N.E. 450, 451 (Ind. 1903) (city council abolished the office of city attorney in the middle of the term and paid attorney for work done through date of abolishment, thereafter the attorney was no longer an officer of the city).

assessor, and the deputies and employees of each. Ind. Code § 36-6-8-10(a) (emphasis added). Chapter 36-2-5 provides that compensation for an elected county officer "may not be changed in the year for which it is fixed." Ind. Code § 36-2-5-13(a). Chapter 36-2-5 applies to elected township assessors and trustee assessors. Ind. Code § 36-6-8-10(a).

The statutory prohibition against diminishing the fixed yearly compensation of an elected official is consistent for all elected county, township and city officials. Ind. Code § 36-2-5-13(a); § 36-4-7-2(c); and § 36-6-6-10(d).³ Typically, such restrictions against changing the compensation of public officers are believed to promote definiteness and certainty as to the salary of an office, keep officers from seeking increased compensation, and deter the appropriating body from influencing an office by threatening or promising salary changes. 63C Am. Jur. 2d Pub. Officers and Employees § 294.

"Compensation" is not defined for purposes of chapter 36-2-5. The term may be broadly held to encompass any form of payment for services and may include fringe benefits such as health insurance or pension payments. *Hilligoss v. LaDow*, 368 N.E.2d 1365, 1369-70 (Ind. Ct. App. 1977). The primary objective in construing a statute is to ascertain and give effect to the legislature's intent. *Johnson Co. Farm Bur. Coop. Ass'n. v. Ind. Dept of State Rev.*, 578 N.E.2d 578, 580 (Ind. Tax. Ct. 1991). As previously noted, it is generally assumed that a statutory restriction against diminishing an officer's fixed compensation is used to promote certainty of the valuable perquisites of an office and to deter any improper influence over an officer. Therefore, it is likely that the legislature intended the term "compensation," in this instance, to include all forms of salary and fringe benefits.

Therefore, under sections 36-6-8-10 and 36-2-5-13(a), the compensation of an elected township assessor or a trustee assessor may not be increased or decreased by a county council for the year in which it is fixed. However, the statutory prohibition against changes in compensation does not apply to deputies or employees of the elected township assessor or trustee assessor. Deputy and employee compensation may be changed at any time pursuant to the procedure allowed under section 36-2-5-13(a).

Additionally, section 36-6-6-10(e) also allows a township board to supplement the salary of a township trustee assessor or an appointed officer to compensate for performing assessing duties, but only through June 30, 2008. Section 36-6-6-10(e) does not grant the board the additional authority to decrease the salary once the supplement is made. If the trustee assessor or appointed officer's salary is supplemented by the township board, section 36-6-6-10(d) prohibits the board from thereafter decreasing the salary during the fiscal year for which it is fixed.

Finally, elected township assessors are entitled to receive \$1,000 per year after becoming a certified level two or three Indiana assessor-appraiser. Ind. Code § 36-6-8-6(a); 36-2-5-3(b). The compensation is in addition to and not part of the elected township assessor's annual salary. *Id.* The township assessor is entitled to receive the additional \$1,000 "for as long as the person

serves in that position and maintains the level two or level three certification." Ind. Code § 36-6-8-6(d).⁴ Therefore, even though the county assessor may have assumed the assessor duties by law or as a result of a referendum, an elected township assessor serving out the remainder of his or her term of office is entitled to the annual payment of \$1,000, provided that the certification is maintained.

C. Dual Officeholding

Article II, Section 9 of the Indiana Constitution prohibits dual officeholding, or the holding of two lucrative offices at the same time. A public service position is considered a lucrative office for purposes of Article II, Section 9 if state law grants any of the state's sovereign power to the officeholder and the officeholder is entitled to any monetary compensation for service. See *Dual Officeholding Guide*, Indiana Attorney General (2008) (available at <http://www.in.gov/attorneygeneral/legal/advisory/pub/DualOfficeHoldingGuide.pdf>).

Lucrative officeholders include elected township assessors, township trustees performing assessor duties, and county assessors. See *Bishop v. State ex rel. Griner*, 48 N.E. 1038, 1041 (Ind. 1898); *Wells v. Peden*, 94 N.E. 321, 322 (Ind. 1911). By law, the deputies of officers of a political subdivision, such as a county or township, are not lucrative officeholders. Ind. Code § 5-6-4-3. Therefore, deputies of county assessors are not lucrative officeholders.

A person may hold both the office of elected township assessor and deputy county assessor position without being in violation of the dual officeholding prohibition. Similarly, a person may hold both the positions of trustee assessor and deputy county assessor.

D. Transfer of "Employment Positions" under HEA 1001, Section 834

Section 834 is a non-code statutory provision that requires the transfer of matters from the elected township assessor or trustee assessor to the county assessor after the assessor duties have been transferred by law or after a referendum. 1001 HEA, § 834. Real and personal property, outstanding obligations, and the funds of the elected township assessor and trustee assessor are transferred under section 834.

Section 834 also provides that "the employment positions" of the elected township assessor and all employees of the elected township assessor are transferred. 1001 HEA § 834(1) and (2). "Employment positions" is not defined.

DLGF believes that "employment positions" is a reference to the transfer of a budget line item. We read the statute more broadly. The new law does not immediately abolish the office of the elected township assessor upon the transfer of assessor duties to the county assessor. The elected township assessor continues to serve out his/her term with the sole duty of assisting the county assessor in the transition. HEA 1001, § 832(b). Therefore, the transfer of "employment

⁴ Because the statute does not define the term "township assessors," we assume that section 36-6-8-6 applies to both elected township assessors and township trustee assessors.

positions" would not mean a transfer of the elected township assessor as an employee since he/she would continue to act as an elected official and not an employee of the county assessor.

Furthermore, given that the elected township assessor's duties are restricted to assisting the county assessor with the transition, the transfer of the "employment position" under section 834 should be read to allow the county to create a new position to assist with the newly assigned assessing duties. Section 36-2-5-11(c)(2) indicates that the county council fixes the number of deputies and employees for each office. The number of employees is limited only by the amount of funding appropriated by the county council. *Id.* The transferred "employment position" would require additional funding appropriated by the county council. An employee selected to fill the position would be filling a new position that is in addition to that of the elected township assessor who is fulfilling his or her term of office by assisting the county assessor.

E. Unemployment Insurance

Services of elected officials are excluded from coverage for purposes of establishing an unemployment insurance award under Indiana law. Ind. Code § 22-4-8-2(i)(2). Employment as an elected official cannot be used to qualify for unemployment insurance benefits.

We appreciate the opportunity to provide this legal analysis.

Sincerely,



Stephen Carter,
Attorney General

Rebecca Walker,
Deputy Attorney General