

Clerk-Treasurers and Town Councils

Powers, Duties, and Division of Responsibilities

Disclaimer

- Attorneys for the State Board of Accounts represent the state agency for which we work—the State Board of Accounts.
- While we aim to provide helpful direction to local units and are a useful resource, we do not, and cannot, represent local units as counsel.
- Only your local town attorney, city attorney, or corporation counsel can provide formal legal advice to your unit.

Basic Structure of Towns

- Indiana Code 36-5-6-2
 - Legislative Branch – town council
 - Executive Branch – town council president
 - Clerk and Fiscal Officer – town clerk-treasurer

Town Council Responsibilities

Legislative Powers

Basic Legislative Power

- Indiana Code 36-5-2-9
 - “Adopt ordinances and resolutions for the performance of the functions of the town”
 - “Purchase, hold, and convey any interest in property, for the use of the town”

Town Council Responsibilities

Fiscal Powers

Salaries

- IC 36-5-3-2(b)
 - “The town legislative body shall, by ordinance, fix the compensation of its own members, the town clerk-treasurer, and the town marshal.”
 - “The legislative body shall provide reasonable compensation for other town officers and employees.”

Town Council Responsibilities

Fiscal Powers

Budget

- Indiana Code 36-5-3-4
 - “The legislative body shall prepare an ordinance fixing the rate of taxation for the ensuing budget year and an ordinance making appropriations for the estimated department budgets and other town purposes”
- Indiana Code 36-5-3-5
 - “The town legislative body may make further or additional appropriations by ordinance . . . The legislative body may, by ordinance, decrease any appropriation set by ordinance”
- Indiana Code 36-5-4-6
 - “A warrant for the payment of a claim may only be issued if the claim is . . . allowed by the town legislative body”

Town Executive Responsibilities

Town Council President

- Indiana Code 36-5-2-10(a)
 - Must sign all legislation
 - BUT – no veto authority
- Indiana Code 36-5-3-3(3)
 - Meets with department heads and the clerk-treasurer to review and revise preliminary budget proposals
- The role of the town executive is largely ceremonial

Town Clerk-Treasurer Responsibilities

Fiscal Officer

- Indiana Code 36-5-6-6
 - Receive and care for all town money and pay the money out only on order of the town legislative body
 - Keep accounts showing when and from what sources the clerk-treasurer has received town money and when and to whom the clerk-treasurer has paid out town money
 - Prescribe payroll and account forms for all town offices
 - Prescribe the manner in which creditors, officers, and employees shall be paid
 - Manage the finances and accounts of the town and make investments of town money
 - Prepare for the legislative body the budget estimates of miscellaneous revenue, financial statements, and the proposed tax rate

Town Clerk-Treasurer Responsibilities

Fiscal Officer

- Indiana Code 36-5-3-3
 - The clerk-treasurer shall prepare an itemized estimate of revenues available for the ensuing budget year
 - Each department head shall prepare for the department head's department an estimate of the amount of money required for the ensuing budget year
 - The clerk-treasurer shall prepare an itemized estimate of expenditures for other purposes, above the money proposed to be used by the departments
- Indiana Code 36-5-3-4
 - The clerk-treasurer shall present the report of budget estimates to the town council

Town Clerk-Treasurer Responsibilities

Fiscal Officer

- Indiana Code 36-5-4-6
 - The clerk-treasurer must receive and certify each claim or invoice before it can be paid
 - NOTE: As mentioned above, the town council must also review and approve each payment
- Indiana Code 36-5-4-12
 - However, the clerk-treasurer may pay a claim or invoice before the town council approves the claim *if* the town council passes an ordinance authorizing the clerk to pay claims prior to town council approval

Town Clerk-Treasurer Responsibilities

Clerk

- Indiana Code 36-5-6-6
 - Maintain custody of the town seal and the records of the legislative body
 - Issue all licenses authorized by statute and collect the fees fixed by ordinance
 - Serve as clerk of the legislative body by attending its meetings and recording its proceedings
 - Administer oaths, take depositions, and take acknowledgment of instruments that are required by statute to be acknowledged, without charging a fee
 - Serve as clerk of the town court under, if the judge of the court does not serve as clerk of the court or appoint a clerk of the court
- Indiana Code 36-5-4-10
 - Clerk-treasurers are required to deliver town records and property in their custody to their successor

Town Clerk-Treasurer Responsibilities

Deputies

- Indiana Code 36-5-6-7(a)
 - “The clerk-treasurer shall appoint the number of deputies and employees needed for the effective operation of the office, with the approval of the town legislative body. The clerk-treasurer's deputies and employees serve at the clerk-treasurer's pleasure.”
- Indiana Code 36-5-6-7(b)
 - “If a town owns a utility and the clerk-treasurer is directly responsible for the billing and collection of that utility's rates and charges, the clerk-treasurer shall appoint those employees who are also responsible for that billing and collection. These employees serve at the clerk-treasurer's pleasure.”

Town Clerk-Treasurer Responsibilities

Legislative

- Indiana Code 36-5-2-8
 - “The town clerk-treasurer is the clerk of the legislative body”
 - “The clerk-treasurer is an ex officio member for the purpose of casting the deciding vote to break a tie”
- Clerk-treasurers’ legislative power is limited. It applies only to situations where a tie-breaking vote is required

Case #1

Schafer v. Sellersburg Town Council (Court of Appeals – 1999)

Facts

- In 1995, the town council adopted an ordinance removing the clerk-treasurer as utilities clerk.
- The council entered into a contract with a private corporation to manage utilities billing and fee collection.
- This task had previously been performed by the clerk-treasurer with the assistance of four deputy clerk-treasurers. After the contract was signed, the number of deputies in the clerk-treasurer's office was reduced to one.

Case #1

Schafer v. Sellersburg Town Council (Court of Appeals – 1999)

Legal Question

- Does the clerk-treasurer's duty to receive and care for town funds under Indiana Code 36-5-6-6(b)(1) or the clerk-treasurer's duty to keep accounts showing money received under Indiana Code 36-5-6-6(b)(2) require the clerk-treasurer to directly bill and collect utility fees?

Case #1

Schafer v. Sellersburg Town Council (Court of Appeals, 1999)

Holding

- The clerk-treasurer only serves as utilities clerk if the town council elects to use the clerk-treasurer as utilities clerk.
- The court analyzed the text of Indiana Code 36-5-6-6 and found that the language does not require direct billing. The statute imposes a general duty rather than a specific duty.
- More importantly, the court pointed to the language in Indiana Code 36-5-6-7(b), which says “If a town owns a utility and the clerk-treasurer is directly responsible for the billing and collection of that utility's rates and charges.” This language indicates that a town may or may not choose to make a clerk-treasurer responsible for utility billing and collection.

Case #1

Schafer v. Sellersburg Town Council (Court of Appeals, 1999)

Takeaway

- While clerk-treasurers may serve as the clerk of a town utility for billing and collection purposes, the town council ultimately gets to decide whether the clerk-treasurer will serve as utilities clerk

Case #2

Hinsenkamp v. Seelyville Town Council (Court of Appeals, 2014)

- Note: This is an unpublished decision
- What is an unpublished decision?
 - It means that the Court of Appeals' decision is not binding precedent. It's persuasive authority, and other courts are not required to follow the ruling
 - However, persuasive authority can be helpful to understand how a court is likely to think about a future legal dispute

Case #2

Hinsenkamp v. Seelyville Town Council (Court of Appeals, 2014)

Facts

- New clerk-treasurer takes office on January 1. The town council hires the former clerk-treasurer to serve as the Town's office manager under the direct supervision of the town manager. As office manager, the former clerk-treasurer's duties include billing and collection for the Town's utilities.
- On February 2, the new clerk-treasurer fired the former clerk-treasurer.
- The town council re-hired the former clerk-treasurer and communicated to the current clerk-treasurer that she did not have the authority to fire the former clerk-treasurer from her role as office manager.

Case #2

Hinsenkamp v. Seelyville Town Council (Court of Appeals, 2014)

Facts (continued)

- Also, the new clerk-treasurer discovered she was being paid only \$16,636 per year while her predecessor earned \$48,195 per year. The new clerk-treasurer believed her reduced salary was contrary to IC 36-5-3-2, which says that the compensation of an elected town officer may not be reduced below the amount fixed for the previous year.
- The clerk-treasurer asked the town council to increase her pay and the town council refused. The clerk-treasurer then asked our agency, the State Board of Accounts, for an opinion on what her pay should be, and our Agency authored an opinion that she should be no less than her predecessor, \$48,195. The clerk-treasurer then, without the town council's blessing, began paying herself the increased salary.

Case #2

Hinsenkamp v. Seelyville Town Council (Court of Appeals, 2014)

Legal Question #1

- Did the clerk-treasurer have the authority to terminate the office manager?
 - The clerk-treasurer argued that IC 36-5-6-7 gave her, not the town council, authority to terminate the office manager: “If a town owns a utility and the clerk-treasurer is directly responsible for the billing and collection of that utility's rates and charges, the clerk-treasurer shall appoint those employees who are also responsible for that billing and collection. These employees serve at the clerk-treasurer's pleasure.”

Case #2

Hinsenkamp v. Seelyville Town Council (Court of Appeals, 2014)

Holding #1

- The Court of Appeals rejected the clerk-treasurer's argument and said the town council had the authority to hire and fire the office manager.
- The Court engaged in a plain textual analysis. Employees responsible for billing and collecting utility rates only serve at the clerk-treasurer's pleasure **if** the town council selects the clerk-treasurer as the utilities clerk.

Case #2

Hinsenkamp v. Seelyville Town Council (Court of Appeals, 2014)

Legal Question #2

- Was the newly elected clerk-treasurer entitled to be paid at the same higher rate as her predecessor in office?

Case #2

Hinsenkamp v. Seelyville Town Council (Court of Appeals, 2014)

Holding #2

- The new clerk-treasurer was only entitled to the lower salary, \$16,636. The court looked at the record and the Town's salary ordinance and determined that the clerk-treasurer's predecessor had been doing two jobs with two different salaries: (1) clerk-treasurer and (2) office manager.
- The salary ordinance and the evidence made clear that the new clerk-treasurer's predecessor was paid \$16,636 for serving as clerk-treasurer and was paid the additional \$31,559 for serving as office manager, leading to her total salary of \$48,195. The Court interpreted Indiana Code 36-5-3-2, saying it only prohibited the newly elected clerk-treasurer from having her compensation reduced from the "clerk treasurer" amount—\$16,636.
- NOTE: The State Board of Accounts' opinion was irrelevant to the Court. Our opinion was merely "an audit opinion and not a legal opinion . . . the opinion carries no weight where the legal validity of her increased salary is at issue."

Case #2

Hinsenkamp v. Seelyville Town Council (Court of Appeals, 2014)

Takeaways

- A clerk-treasurer cannot terminate employees who are not under their authority. The office manager here was under the authority of the town manager, not the clerk-treasurer
- Check salary ordinances carefully. The town council is the fiscal body, the council sets employee compensation
- Don't unilaterally increase your own pay
- An opinion from our Agency isn't going to protect you when the issues reach beyond the scope of a State Board of Accounts' engagement. We exist to provide guidance and advice, but our Agency's opinion is not binding in a courtroom.

Case #3

Miller v. Town Board of Sellersburg (Court of Appeals, 2017)

Facts

- The town council adopted a budget that funded only a single deputy clerk position, eliminating one employee in the clerk-treasurer's office
- The clerk-treasurer filed suit, arguing that she had the authority under Indiana Code 36-5-6-7(a) to appoint "the number of deputies and employees needed for the effective operation of the office." The clerk-treasurer argued that she needed two deputies and had appointed two deputies.
- The council filed a response arguing that the statute gave the clerk-treasurer the authority to appoint "the number of deputies and employees needed for the effective operation of the office, with the approval of the town legislative body"

Case #3

Miller v. Town Board of Sellersburg (Court of Appeals, 2017)

Legal Question

- Does a town council have the authority to alter a clerk-treasurer's budget to reduce the number of deputies the clerk-treasurer can hire?

Case #3

Miller v. Town Board of Sellersburg (Court of Appeals, 2017)

Holding

- The town council could amend the budget ordinance to reduce the number of deputy clerk-treasurers from two to one
- The court focused on the language “with the approval of the town legislative body,” and held that “the statute clearly states that the clerk-treasurer's appointment of deputies and employees needed for the operation of that office requires the approval of the town legislative body.”

Case #3

Miller v. Town Board of Sellersburg (Court of Appeals, 2017)

Takeaway

- Town councils have broad authority to make decisions that will affect the operation of the clerk treasurer's office—often through their power as a fiscal body

Government Technical Assistance and Compliance Inquiries

Allowing Councilmembers Access to Financial Records

- “I have a councilmember who wants to be given access to the financial records in the clerk-treasurer’s office. What do I do?”
- The long-standing position of the State Board of Accounts, from an auditing perspective, is the clerk-treasurer is the custodian of all town financial information [Indiana Code 36-5-6-6]. We have advised clerk-treasurers that they should take precautions and implement internal controls to ensure the integrity of those financial records under their possession, including to whom and under what circumstances access is granted.
- Grant access, but you must keep internal controls in mind. Consider granting “read-only” access to your curious councilmembers or finding another solution that does not jeopardize the integrity of your financial records.

Government Technical Assistance and Compliance Inquiries

Disbursing Funds – Contrary to Law

- “The town council has directed me as clerk-treasurer to use utility proceeds for non-utility expenditures. Can I refuse to expend the money as directed by the Council?”
- If a clerk-treasurer questions the lawfulness of an expense is concerned that an expense is being paid from an incorrect fund, the State Board of Accounts does not take issue with the clerk-treasurer obtaining clarity and resolving the situation prior to paying the claim.
- Do not delay. Be prompt in sorting out the propriety of the expenditure.
- Get an opinion from local counsel!