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January 29, 2020

Hon. Andrew Adams  
Circuit Court No. 1  
Clark County Government Building  
501 E. Court Avenue  
Jeffersonville, IN 47130

**VIA HAND DELIVERY**

RE: West Clark Community Schools Reorganization

Dear Judge Adams:

Along with Michael Gillenwater, I represent West Clark Community Schools (“West Clark”). This correspondence accompanies a certification (**Exhibit A**) tendered to the Court for signature whereby a public question, namely whether West Clark should be reorganized by being divided into two independent school corporations (Silver Creek School Corporation and Borden/Henryville School Corporation), will be certified to the Clark County Election Board for placement on the ballot for the May 5, 2020 primary election. Please allow me to explain the statutory framework leading to this certification.

Indiana Code Chapter 20-23-4 governs the organization and reorganization of community school corporations such as West Clark. This chapter sets forth a process whereby a county committee is established (IND. CODE § 20-23-4-11), a preliminary organization plan is prepared (IND. CODE § 20-23-4-12), a plan is submitted for approval to the Indiana State Board of Education (“SBOE”) (IND. CODE §§ 20-23-4-1 through 19), and, if approved by the SBOE, presented to voters for approval through a petition (IND. CODE § 20-23-4-20(c)) or by public question presented at an election. IND. CODE § 20-23-4-21. Once this process is complete, “the county committee shall be dissolved.” IND. CODE § 20-23-4-38(a). Clark County completed this process in the 1960’s, during which West Clark was formed, and its county committee was dissolved. *See* 2018 Ind. Op. Att’y Gen. No. 11 at 2, 4<sup>1</sup>.

However, “[a]fter a county committee has been dissolved, if the local governing body [*i.e.*, the school board] or the state superintendent considers further reorganization necessary to improve educational opportunities for the students in the county, the local school trustees or the state superintendent shall submit proposed changes to the state board.” IND. CODE § 20-23-4-38(b). As stated by the Indiana Attorney General, the local school board—here the West Clark Board of

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<sup>1</sup> Available at <file:///dt-fileserver/UsrRedirect/jmayes/Desktop/AG%20Opinion%202018-11.pdf> (last visited Jan. 29, 2020).

School Trustees—may take action to further reorganize without the need to establish a county committee. 2018 Ind. Op. Att’y Gen. No. 11 at 1, 3-4. In other words, a local school board operating under Section 20-23-4-38(b) is substituted for the county committee in the statutory references.

As you may know, West Clark, pursuant to Indiana Code § 20-23-4-38(b), presented a Reorganization Plan to the SBOE. The Plan proposed to divide West Clark into two new school corporations—Silver Creek School Corporation and Borden/Henryville School Corporation.<sup>2</sup> The SBOE approved the Plan at its November 6, 2019.<sup>3</sup> (See **Exhibit B**, “SBOE Written Notice.”)

Following approval by the SBOE and as previously indicated, Chapter 20-23-4 permits voter approval of reorganization through a petition. IND. CODE § 20-23-4-20(c)-(e). However, here, no such petition is being pursued.

After the deadline for certification of the petition passes<sup>4</sup>, Indiana Code directs as follows:

(a) If the chairperson of the county committee does not receive the certification or combined certifications under section 20(f) of this chapter not later than ninety (90) days after the receipt by the county committee of the plan referred to in section 20(a) of this chapter, **the judge of the circuit court of the county from which the county committee submitting the plan was appointed shall:**

- (1) **certify the public question under IC 3-10-9-3; and**
- (2) **order the county election board to conduct a special election in which the registered voters residing in the proposed community school corporation may vote to determine whether the corporation will be created.**

IND. CODE § 20-23-4-21(a) (emphasis supplied). A special election, however, is not required if there is a primary election within six months of the SBOE’s approval:

- (b) If:
- (1) a primary election at which county officials are nominated; or
  - (2) a general election at which county officials are elected;
- and for which the question can be certified in compliance with IC 3-10-9-3 is to be held not later than six (6) months after the receipt by the chairperson of the county committee of the plan referred to in section 20(a) of this chapter, regardless of whether the ninety (90) day period referred to in subsection (a) has expired, the judge shall order the county election board to conduct the special election to be held in conjunction with the primary or general election.

<sup>2</sup> The Plan and SBOE memorandum analyzing the Plan are available at [https://www.in.gov/sboe/files/West%20Clark%20Reorganization%20Memorandum%20with%20exhibits%2011-4-19%20\(fiscal-tax%20m....pdf](https://www.in.gov/sboe/files/West%20Clark%20Reorganization%20Memorandum%20with%20exhibits%2011-4-19%20(fiscal-tax%20m....pdf) (last visited Jan. 29, 2020).

<sup>3</sup> The Written Notice provided to the West Clark Board of School Trustees pursuant to 20-23-4-20(a) via certified mail arrived on November 13, 2019.

<sup>4</sup> The ninety-day deadline for certification of any petition expires on February 11, 2020.

IND. CODE § 20-23-4-21(b).

Certification of the local question must occur on or before noon on February 20, 2020. Section 20-23-4-21(a) requires that the judge “certify the public question under IC 3-10-9-3.” Section 3-10-9-3 reads in its entirety as follows:

If a local public question must be certified to an election board by law, that certification must occur no later than noon:

- (1) **seventy-four (74) days before a primary election if the public question is to be placed on the primary or municipal primary election ballot;** or
- (2) August 1 if the public question is to be placed on the general or municipal election ballot.

IND. CODE § 3-10-9-3 (emphasis supplied). The seventy-fourth day falls on February 21, 2020, thus moving the certification date to February 20, 2020.

Pursuant to Indiana Code § 20-23-4-21(g), the following question is presented for certification:

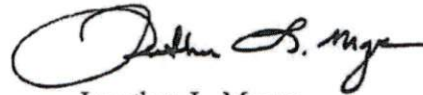
“Shall West Clark Community Schools be divided into two independent school corporations—Silver Creek School Corporation and Borden-Henryville School Corporation—as provided in the Reorganization Plan for West Clark Community Schools?”

The certification, attached as Exhibit A, certifies this question to the Clark County Election Board. Ordinarily, school referendum questions must receive approved by the Indiana Department of Local Government Finance (“DLGF”). *See* IND. CODE § 6-1.1-20-3.6(d). But no such requirement applies to this reorganization question. Nevertheless, I have presented this question to the DLGF’s General Counsel for review, and he has approved the language. *See* Exhibit C, DLGF Correspondence.

In conclusion, thankfully the Indiana Code charts a relatively straightforward process. Once the State Board of Education approved West Clark Community School’s Reorganization Plan on November 6, 2019, and since no petition is filed, then the public question is certified by the Clark County Circuit Judge to the Clark County Election Board to be placed on the May 5, 2020 ballot. The attached certification accomplishes this goal.

Should you have any questions, please let me know.

Sincerely,



Jonathan L. Mayes

JLM/klk  
Enclosures (3)

Cc: Michael Gillenwater  
Gillenwater Law Offices  
411 Watt Street, Jeffersonville, IN 47130  
(via email to: [michael@gillenwater.us](mailto:michael@gillenwater.us))

Myra Powell  
President  
Board of School Trustees  
West Clark Community Schools  
(via email to: [myra@wrightbrosimpl.com](mailto:myra@wrightbrosimpl.com))

Clemen Pérez-Lloyd  
Superintendent  
West Clark Community Schools  
(via email to: [cperez-lloyd@westclarkschools.com](mailto:cperez-lloyd@westclarkschools.com))

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# EXHIBIT A

STATE OF INDIANA  
CLARK COUNTY CIRCUIT COURT NO. 1

In re: CERTIFICATION OF PUBLIC )  
QUESTION REGARDING WEST )  
CLARK COMMUNITY SCHOOLS )

**ORDER CERTIFYING PUBLIC QUESTION  
REGARDING WEST CLARK COMMUNITY SCHOOLS**

In accordance with Indiana Code §§ 20-23-4-21(a), (b), (g) and 3-10-9-4, the following public question is certified to the Clark County Election Board for placement on the ballot at the May 5, 2020 primary election, the form of which public question has been approved by the Indiana Department of Local Government Finance:

Shall West Clark Community Schools be divided into two independent school corporations—Silver Creek School Corporation and Borden-Henryville School Corporation—as provided in the Reorganization Plan for West Clark Community Schools?

YES

NO

It is ORDERED, ADJUDGED AND DECREED that the Clark County Election Board shall place the public question on the ballot for the May 5, 2020 primary election in which the registered voters residing within the current boundaries of West Clark Community Schools may vote on the public question.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Andrew Adams  
Judge  
Clark County Circuit Court No. 1

3794320\_1  
Copies to:

Jonathan L. Mayes, Esq.  
BOSE MCKINNEY & EVANS, LLP  
111 Monument Circle, Suite 2700  
Indianapolis, IN 46204

Ms. Susan Popp  
Clerk  
Clark County  
501 E. Court Avenue, Room 139  
Jeffersonville, IN 47130

Michael Gillenwater  
Gillenwater Law Offices  
411 Watt Street, Jeffersonville, IN 47130

# EXHIBIT B



# INDIANA STATE BOARD OF EDUCATION

## WRITTEN NOTICE

Pursuant to IC 20-23-4-20(a),<sup>1</sup> I, Timothy A. Schultz, General Counsel to the Indiana State Board of Education ("Board"), do hereby certify that West Clark School Corporation's comprehensive plan for reorganization of a school corporation,<sup>2</sup> was presented to the Board for consideration and approval. Furthermore, I certify that the reorganization plan was approved by the Board during the November 6, 2019, business meeting.

*Timothy Schultz*  
Timothy A. Schultz  
General Counsel  
Indiana State Board of Education

<sup>1</sup> IC 20-23-4-20 Approval of reorganization plan by state board; notice; creation of community school corporation by petition or elections; contents of petition and petitioning procedure

Sec. 20. (a) After the state board approves a comprehensive plan or partial plan for reorganization of school corporations as submitted to the state board by a county committee, the state board shall promptly, by certified mail with return receipt requested, give written notice of the approval to:

- (1) the chairperson of the county committee submitting the plan; and
- (2) the judge of the circuit court of the county from which the county committee was appointed.

<sup>2</sup> The reorganization plan and supporting materials presented to the Board for consideration can be found at:

<https://www.in.gov/sboe/files/West%20Clark%20Reorganization%20Memorandum%20with%20exhibits%2011-4-19%20fiscal-tax%20m....pdf>

# EXHIBIT C

**Mayes, Jonathan L.**

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**From:** Shackle, Daniel <DShackle@dlgf.IN.gov>  
**Sent:** Tuesday, January 28, 2020 11:27 AM  
**To:** Mayes, Jonathan L.  
**Subject:** RE: West Clark Community Schools Referendum

Looks good from my seat.

Dan

**Daniel Shackle**

Chief of Staff and General Counsel  
Department of Local Government Finance  
State of Indiana  
100 N. Senate Ave., N-1058B  
Indianapolis, IN 46204  
(317) 233-9219  
[www.IN.gov/DLGF](http://www.IN.gov/DLGF)

#HoosiersCountIN2020  
[www.Census.Indiana.edu](http://www.Census.Indiana.edu)

**From:** Mayes, Jonathan L. [mailto:jmayes@boselaw.com]  
**Sent:** Monday, January 27, 2020 10:49 AM  
**To:** Shackle, Daniel <DShackle@dlgf.IN.gov>  
**Subject:** RE: West Clark Community Schools Referendum

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Dan –

Please let me know your thoughts on the following question:

“Shall West Clark Community Schools be divided into two independent school corporations—the Silver Creek School Corporation and the Borden-Henryville School Corporation—as provided in the Reorganization Plan for West Clark Community Schools?”

Thank you,

Jon

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