

STATE OF INDIANA  
BEFORE THE BOARD OF CLARK COUNTY COMMISSIONERS

RESOLUTION NO. 2 - 2011

**A RESOLUTION AUTHORIZING THE FILING OF A PETITION FOR JUDICIAL REVIEW IN THE INDIANA TAX COURT OF THE DEPARTMENT OF LOCAL GOVERNMENT FINANCE'S DENIAL OF CLARK COUNTY'S MAXIMUM LEVY APPEAL DUE TO MATHEMATICAL OR DATA ERROR AT THE LOCAL LEVEL.**

WHEREAS, this Board of Commissioners of Clark County, Indiana (this "Board"), is the county government executive body pursuant to the provisions of Ind. Code § 36-2-2-2, the county government legislative body pursuant to the provisions of Ind. Code § 36-1-2-9(1); and,

WHEREAS, this Board is aware that a structural budgetary deficit adversely affecting the orderly and efficient provision of essential governmental services was created by the Clark County Council's intentional reduction of the maximum levy in 2007 for the 2008 budget; and,

WHEREAS, this Board believes that the County Council's intentional reduction of the maximum levy, and the chronic financial distress that has resulted therefrom, is the product of a mathematical or data error of the County Council in that the County Council would not reasonably have effected such reduction if it had known and understood the magnitude of the financial problems that would result as the direct and proximate result thereof; and,

WHEREAS, on or before October 19, 2010, Clark County submitted a maximum levy appeal to the Department of Local Government Finance ("DLGF"), seeking relief in the aggregate amount of \$7,206,383.00 as the cumulative adverse financial effects of the maximum levy reduction; and,

**WHEREAS**, on December 22, 2010, the DLGF issued the order attached hereto as Exhibit "A" in which it wholly denied Clark County's maximum levy appeal due to mathematical or data error; and,

**WHEREAS**, it is the informed opinion of this Board that the effect of the DLGF's denial of the maximum levy appeal on the to-be-approved 2011 budget order will render Clark County unable to fund the essential functions of County government, including without limitation, the State mandated 2012 reassessment, the incarceration of inmates in the Clark County Jail, the Clark County judicial system, and the operation and maintenance of the Clark County Government Building; and,

**WHEREAS**, it is the position of this Board that the interests of the citizens of Clark County are adversely affected by the DLGF's total denial of the maximum levy appeal to the extent that Clark County must seek judicial review of such decision by the Indiana tax court, and now adopts this Resolution for purposes of authorizing the filing of such petition.

**NOW, THEREFORE, BE IT RESOLVED** by this Board of Clark County Commissioners as follows:

1. The Clark County Attorney is hereby authorized and directed to file a petition for judicial review of the DLGF's denial of Clark County's maximum levy appeal due to mathematical or data error at the local level pursuant to the provisions of Ind. Code § 6-1.1-18.5-15(b), which petition shall be substantially in the form attached hereto as Exhibit "B".

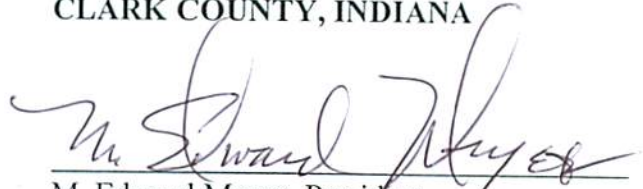
2. This Board invites the Clark County Council and the Clark County Auditor to join in the execution of this petition as shown in its draft form. However, in the event that either the Clark County Council or the Clark County Auditor are unable or unwilling to join in such

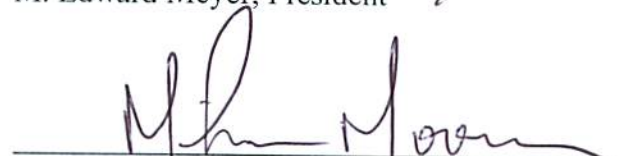
petition, the Clark County Attorney is nevertheless authorized and directed to timely file such petition for judicial review on behalf of this Board.

3. This Resolution shall be in full force and effect upon its passage and promulgation as evidenced by the affirmative signatures of the undersigned as the majority of the duly elected and serving members of this Board.

So Resolved by this Board by a vote of 3 in favor, and 0 against, this 3<sup>rd</sup> day of February, 2011.

**BOARD OF COMMISSIONERS OF  
CLARK COUNTY, INDIANA**

  
M. Edward Meyer, President

  
Michael G. Moore, Commissioner

  
Les Young, Commissioner

(SEAL)

Attested by:

  
R. Monty Snelling, Clark County Auditor

STATE OF INDIANA  
DEPARTMENT OF LOCAL GOVERNMENT FINANCE  
Room 1058, IGCN – 100 North Senate  
Indianapolis, IN 46204

IN THE MATTER OF THE REQUEST OF )  
CLARK COUNTY, CLARK COUNTY, ) ORDER 1029009  
DUE TO A MATH ERROR )

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The Department of Local Government Finance (“Department”) has reviewed your appeal for an excessive levy in the amount of \$7,206,383.00 due to a math error. After a review of the petition and a recommendation of the Local Government Tax Control Board, the Department, following IC 6-1.1-18.5-12, and in consideration of all evidence provided, finds as follows:

**DENIED**

The excessive levy appeal for Clark County due to a math error is denied. The Department finds that no error occurred, but rather that Clark County intentionally lowered its levy in 2008.

STATE OF INDIANA  
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

  
\_\_\_\_\_  
Brian E. Bailey, Commissioner

STATE OF INDIANA  
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

I, Micah G. Vincent, General Counsel for the Department of Local Government Finance, hereby certify that the above is an order of the Commissioner of the Department of Local Government Finance made this date in the above-entitled matter and that the Commissioner has personally signed the same under his statutory authority.

WITNESS MY HAND AND SEAL of this Department on this 22<sup>nd</sup> day of December, 2010.

  
\_\_\_\_\_  
Micah G. Vincent, General Counsel

EXHIBIT

A

IN THE INDIANA TAX COURT

CASE NO. \_\_\_\_\_

CLARK COUNTY, INDIANA,  
Petitioner,

v.

INDIANA DEPARTMENT OF  
LOCAL GOVERNMENT FINANCE,  
Respondent.

**VERIFIED PETITION FOR JUDICIAL REVIEW  
OF A FINAL DETERMINATION OF THE INDIANA  
DEPARTMENT OF LOCAL GOVERNMENT FINANCE**

Petitioner, Clark County, Indiana (hereinafter "Clark County"), by counsel, for its petition for judicial review of a final determination of respondent, Indiana Department of Local Government Finance (the "Department"), alleges and states as follows:

1. The petitioner in this proceeding is the County Unit of Clark County, Indiana, which maintains a mailing address of Clark County Government Building, Room 404, 501 E. Court Avenue, Jeffersonville, Indiana 47130.

2. This petition is executed and filed on behalf of Clark County by the following undersigned persons:

a. M. Edward Meyer, as the duly elected and serving president of the Board of Clark County Commissioners, the executive body of Clark County government pursuant to the provisions of Ind. Code § 36-2-2-2, and the legislative body of Clark County government pursuant to the provisions of Ind. Code § 36-1-2-9(1).

EXHIBIT  
"B"

b. Kevin Vissing, as the duly elected and serving president of the Clark County Council, the fiscal body of Clark County government pursuant to the provisions of Ind. Code § 36-2-3-2.

c. R. Monty Snelling, as the duly elected and serving Clark County Auditor, the fiscal officer of Clark County government pursuant to the provisions of Ind. Code § 36-2-9-2(c).

3. The Department, as the respondent in this proceeding, is the Indiana Department of Local Government Finance, which maintains a mailing address of 100 N. Senate, N-1058B Indianapolis, Indiana 46204.

4. Prior to October 19, 2010, Clark County submitted an appeal to the Department for correction of a mathematical or data error at the local level affecting the maximum levy of Clark County pursuant to the provisions of Ind. Code § 6-1.1-18-14 (the “Maximum Levy Appeal”), a true and correct copy of which is attached hereto as Exhibit “A”.

5. Clark County and the Department were the only parties as defined in Ind. Code § 4-21.5-1-11 to any proceedings regarding the Maximum Levy Appeal that led to the Department’s Determination.

6. Clark County is entitled to obtain judicial review of the Department’s Determination on the following grounds:

a. Clark County has standing to obtain judicial review of the Department’s Determination as (i) the person to which the Department’s Determination is specifically directed, and (ii) as a party to the proceedings before the Department that led to the Department’s Determination.

b. Clark County is entitled to judicial review pursuant to this petition as it has exhausted all administrative remedies available within the Department, and such review is specifically authorized by the provisions of Ind. Code § 6-1.1-18.5-15(b).

c. Clark County has timely filed this petition within forty-five (45) days following entry of the Department's Determination as required by the provisions of Ind. Code § 6-1.1-18.5-15(b).

d. Clark County shall transmit a certified record of the administrative proceedings to the Indiana Tax Court within thirty (30) days after having received notification from the Department that the certified record has been prepared in accordance with the provisions of Ind. Code § 6-1.1-15-6.

7. The Department's final determination of the Maximum Levy Appeal at issue is its Order 1029009 entered on December 22, 2010, in a proceeding styled as *In re the Matter of the Request of Clark County, Clark County (sic), Due to a Math Error*, in which the Department wholly denied Clark County's Maximum Levy Appeal in the amount of \$7,206,383.00 (the "Department's Determination"), a true and correct copy of which final determination is attached hereto as Exhibit "B".

8. In support of its denial of the Maximum Levy Appeal by entry of the Department's Determination, the Department entered a single finding to the effect that "[t]he Department finds that no error occurred, but rather Clark County intentionally lowered its levy in 2008".

9. Clark County asserts that the Department's Determination is erroneous and should be reversed and/or corrected, in whole or in part, on the following grounds:

a. The Department's Determination that Clark County is ineligible for relief due to mistake, even if initially made with intent, is arbitrary, capricious, and an abuse of its discretion in that Indiana law does not proscribe the grant of relief in such circumstance.

b. According to published newspaper accounts, the Department apparently received and considered objections, petitions, and comments from the public in opposition to the Maximum Levy Appeal prior to entry of the Department's Determination. (See, *The Courier-Journal* article published January 26, 2011, attached hereto as Exhibit "C"). However, since the filing of the Maximum Levy Appeal the Department failed to conduct a hearing thereon as permitted by the provisions of Ind. Code § 6-1.1-18.5-12(c), or otherwise give Clark County notice and opportunity to rebut the additional information that was submitted in opposition to the Maximum Levy Appeal, thereby depriving Clark County of its right to due process in a manner violative of United States Constitution, Amendment 14, and Indiana Constitution, Article 1, § 12.

c. The Department's Determination is not supported by substantial or reliable evidence, and the Department's failure to grant at least partial relief as requested in the Maximum Levy Appeal in a manner that restores Clark County's maximum levy at least to its 2007 level in the formulation and approval of its 2011 budget will leave Clark County unable to fund essential governmental functions, including without limitation, (i) the housing of inmates in the Clark County Jail with staffing levels conforming to applicable governmental standards or requirements, (ii) the completion of the 2012 real property reassessment as mandated by the State of Indiana, (iii) the operational expenses for the Clark County Government Building and Courthouse, and (iv) the adequate funding of Clark County courts, including probation departments and judicially-sponsored programs, in a manner that might reasonably avoid inevitable judicial mandates. As evidence in support of these assertions, Clark County offers the



determination issued on January 3, 2011, by Moody's Investors Service to downgrade Clark County's credit rating due to its "stressed financial condition" as set forth within its report attached hereto as Exhibit "D".

10. Clark County hereby requests that the Indiana Department of Local Government Finance prepare a certified copy of the agency record.

WHEREFORE, Clark County prays for judicial review of the Department's Determination, that the same be vacated and set aside, and that an order be issued remanding this case to the Indiana Department of Local Government Finance for redetermination in accordance with the order of this court, and for all further just and proper relief to which it may be entitled.

**WE AFFIRM, UNDER THE PENALTIES FOR PERJURY, THAT THE FOREGOING REPRESENTATIONS ARE TRUE.**

**BOARD OF COMMISSIONERS OF  
CLARK COUNTY, INDIANA**

By: \_\_\_\_\_  
M. Edward Meyer, President

**CLARK COUNTY COUNCIL**

By: \_\_\_\_\_  
Kevin Vissing, President

\_\_\_\_\_  
R. Monty Snelling, Clark County Auditor

This Petition prepared by:

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And the Clark County Auditor*

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