

Indiana Advisory Commission on Intergovernmental Relations

Monday, November 13, 2015

9:30 A.M. – 12:30 P.M.

Statehouse

Room 404

200 W. Washington Street

Indianapolis, Indiana

MINUTES

CALL TO ORDER/WELCOME

Chairman Mark Messmer called the meeting to order at approximately 9:35 am. He welcomed the group and asked for brief introductions from those in attendance. Attendance is shown in Attachment A.

Meeting Agenda

- Call to Order/Welcome Chairman Mark Messmer
- Approval of Minutes of September 28, 2015 Chairman Mark Messmer
Membership
- Topic: Ensuring the ability of local government to provide and fund local services, including discussion of minimum property taxes, adjusting property assessment rules for nonprofits, and enhancing the ability of local government to assess service fees/payments in lieu of taxes. Chairman Mark Messmer
Jamie Palmer
 - Testimony Chairman Mark Messmer
 - Commission Discussion Chairman Mark Messmer
Membership
- Topic: Ways to encourage local government to utilize current tools for improved efficiency and effectiveness, including interlocal agreements, joint purchasing, local government structural and service consolidation, contracting, and public private partnerships (P3). Chairman Mark Messmer
Jamie Palmer
Membership
- Update on study of Local Fire and EMS Services Chairman Mark Messmer
Jamie Palmer
- Upcoming Meetings: Chairman Mark Messmer
 - Tuesday, December 1, 2015, 9:00 am – Noon, Statehouse
Room 404
- Adjournment Chairman Mark Messmer

APPROVAL OF MINUTES OF SEPTEMBER 28, 2015

Chairman Messmer asked the commission to review the September 28, 2015.

Senator Joseph Zakas made a motion to approve minutes as written. Commissioner Therese Brown seconded the motion. The motion carried unanimously.

TOPIC: ENSURING THE ABILITY OF LOCAL GOVERNMENT TO PROVIDE AND FUND LOCAL SERVICES

Jamie Palmer presented information about issues commission members identified, data documenting the extent of low tax bills and tax exempt properties, and potential solutions to the issue identified (Attachment B).

She listed the following challenges identified by commission members:

- Concentrations of tax exempt properties
- Tax exempt properties with non-tax exempt uses
- Conversion of for-profit hospitals to non-profit status
- Health care consolidation – non-profit hospitals purchase doctor’s offices, nursing homes, etc.
- Non-profit nursing homes and senior housing
- Properties with no or low property tax bills

She indicated that another issue had been identified in her research:

- Increased enrollment in Classified Forest and Wildlands Program. Enrollment reduces assessed values to \$1.00 per acre and property tax revenue for local governments.

She provided data about tax exempt properties by county for Pay 2014 (Attachment C) and acres of government property for 2013 and 2014 (Attachment D). She also provided background data on the Classified Forest and Wildlands Program (Attachments E and F).

She indicated that the overarching issues are inadequate revenues and tax fairness.

Ms. Palmer described a number of potential solutions and treatments:

- Adjust rules for tax exempt property or the administration of those rules
- Adopt payments in lieu of taxes/service fees
 - Current payments in lieu of taxes statutes (Attachment G shows an example of current PILOT statutes)
 - 2015 HB 1355 (Saunders bill) (Attachments H and I) – service fees for non-profits
 - 2015 HB 1476 (Karickhoff bill) (Attachments J and K) – minimum service fees
 - Greenwood proposed fee for non-profits locating in TIF districts (Attachment L)
 - Noblesville and Fishers land use restrictions (Attachment M)

She presented data from the IACIR 2014 survey of local elected officials about preferences for imposing payments in lieu of taxes on various types of tax exempt organizations and considerations for imposing those payments (Attachment B and N).

She also summarized data on properties designated for religious uses (Attachment C).

Mayor Joe Wellman asked if all church property was included.

Ms. Palmer said that it included all properties that have filed for an exemption under that designation.

Councilor Geoff McKim asked about state property.

Ms. Palmer suggested posing those specific questions to the upcoming speakers from the Department of Local Government Finance.

Senator Zakas asked if courthouses were assessed.

Ms. Palmer indicated that courthouses are not assessed.

Senator Mark Stoops asked about the process required when a property is removed from the Forest and Wildlands Program.

Ms. Palmer explained that the property owner must pay ten years past taxes and other penalties. She suggested that an upcoming speaker could provide more details.

Mayor Wellman asked if properties were reaching the no or low tax bills based on property tax caps.

Ms. Palmer indicated that most tax relief for single-family homes comes from the homestead credits.

Darren Vogt asked if the no or low tax properties data included non-profits.

Ms. Palmer indicated that it did not.

Senator Zakas asked about how communities define land uses when they seek to restrict the location of non-profits in tax increment finance districts (TIF).

Ms. Palmer will check into that.

TESTIMONY

Chairman Messmer asked for testimony.

Department of Local Government Finance: Mike Duffy, General Counsel, and Barry Wood, Assessment Division Director, of the Indiana Department of Local Government Finance provided the commission information on the rules and procedures for establishing property tax exemptions (Attachment O). The points covered include:

- Generally exemptions from taxation are granted when there is an expectation that the public will derive a benefit from the exemption.
- A charitable purpose will be found to exist if, 1) there is “evidence of relief of human want...manifested by obviously charitable acts different from the everyday purposes and activities of man in general and, 2) there is an expectation of a benefit that will inure to the public by the accomplishment of such acts”
- Tax exemption is a privilege not a right.
- Exemptions must be applied for and filed with the county assessor.
- Through 2015, exemption is valid after change in ownership if the property continues to meet the requirements.
- If ownership changes or the property is used for non-exempt purposes, the person who obtained the exemption, or the current owner must notify the county assessor in the year the change occurs.
- If any of the statutory prerequisites are not met, the exemption cannot be granted.
- Are there gray areas, for example, in cases when part of a property may be exempt and some may be taxable, like a coffee shop in church property? Exemption may include real property, personal property or both. It may be 100% or a certain percentage depending on the circumstances. Taxpayer must submit evidence that the property qualifies for exemption under a specific statute.
- Properties eligible to be completely property tax exempt include federal, state, political subdivision and municipal property.
- The Oaken Bucket case: Charging below market rent to a religious or charitable entity does not, without more evidence, establish an exempt purpose on the part of the property owner.
- Nursing homes: To qualify for charitable purposes exemption, a taxpayer must show “obviously charitable acts different from the everyday purposes and activities of man in general” which are manifest in the relief of a person’s needs. The benefit that the exemption confers must relieve government of a cost it would otherwise bear.
- Every exemption case stands on its own facts and, therefore, is not subject to bright-line tests or other abbreviated inquiries.

Chairman Messmer said it is hard to get equal eligibility for exemptions across local governments. He asked if a ruling is overturned can it be applied across the state easily.

Mr. Duffy said that a Board of Tax Review ruling does not create a precedent. The decision applies in the county from which it came. Others can choose to follow.

Chairman Messmer indicated that NSWC Crane (federal property) harvests timber and the county benefits from the revenue.

Mr. Duffy suggested that governments may have the option to make payments in lieu of taxes.

Representative Sheila Klinker asked about the difference between 501(c)(3) and 501(C)(4) organizations.

Mr. Duffy indicated that those designations are established for the purposes of federal income tax exemption.

Councilor McKim asked about property tax exemptions for state universities. In some cases, universities own property, such as residential rentals, that generate revenue.

Mr. Duffy indicated that state universities are named specifically in the statute and likely those uses are exempt.

Councilor McKim said that IU Hospital is being moved to Indiana University property. He asked about whether it would still be exempt.

Mr. Duffy said that would depend on who owned the property.

G. Michael Schopmeyer said there needs to be some refinement of what is proprietary. State government doesn't have to own and use properties. Charities have to prove their exemption. He suggested that the Department of Local Government Finance (DLGF) should have authority to adopt rules to create more clarity. Schopmeyer indicated that Kansas and other Midwestern states have passed clarifying language.

Mr. Duffy indicated that the General Assembly must deal with that. It is too important for an administrative agency rule.

Mayor Wellman asked if a county hospital is exempt.

Mr. Duffy said yes.

Senator Zakas asked about for-profit uses within buildings owned by non-profit entities. For example, the Notre Dame Union has a Burger King and a Taco Bell.

Mr. Duffy said the rented part of the building is subject to property taxes.

Senator Zakas said that Holy Cross College owns homes. Are they taxed?

Mr. Duffy said it depends on the specifics of the situation.

Councilor Larry Hesson said the test is whether the owner pays income tax.

Mr. Duffy agreed that income taxes can be considered during the application process, however, there is no bright-line test.

Ms. Palmer asked about whether there are cases brought to DLGF or the tax court based on differential treatment of the same use across counties. She asked about whether the General Assembly would have to act to address such an issue.

Mr. Duffy said that it probably happens that the same type of entity is granted an exemption in one county but denied in another. He cannot estimate how often it occurs. The General Assembly may have to act to address that issue.

Representative Klinker said that some cities like Evansville and West Lafayette have tax exempt schools and elderly housing. Fire and first responders still must come to these tax exempt properties. She asked about how these services are funded.

Mr. Duffy indicated that some communities have utilized fees. He is not aware that the practice is widespread.

Senator Zakas asked who is affected by the adjustments in the assessment calendar.

Mr. Duffy indicated that exempt applications will now be due on April 1; the previous deadline was May 15. Properties that have already filed should not be affected. New filers and properties with a change in circumstances may be affected.

Mr. Vogt reiterated the big issues are inadequate revenues and tax fairness.

Perry County Officials: Randy Kleaving, Commissioner, and Mendy Lassaline, Assessor, of Perry County presented testimony regarding loss of revenue due to the extensive state and federal public land and land in the Classified Forest and Wildlands Program. Ms. Lassaline said that 11.5 percent of county land is in the Classified Forest Program (Attachment P). These lands are assessed at the \$1 per acre. For 100 acres they get \$5.00. The assessment level was set in 1962. They would like for the assessed value to be indexed for inflation. They also would like to have better monitoring to be sure that owners are meeting the requirements of the program.

Mr. Kleaving said they get profit-sharing from the timber sold from state land and some federal payments in lieu of taxes, but they are still struggling.

Representative Klinker asked about what help they want. She asked if they have adopted any additional taxes.

Mr. Kleaving reiterated that they would like to have the Classified Forest Program indexed for inflation. He indicated that the county has recently adopted the Public Safety LOIT to allow the county to build a detention center.

Senator Stoops asked if they were at the tax caps.

Ms. Lassaline said the county is affected by the tax caps and the biggest losses are at the two percent level. Tell City Schools loses the most.

Senator Stoops said that a forest indexing the assessed value per acre would not provide a huge windfall. The underlying problem is the tax caps. We need to remove them.

Councilor McKim asked if the public forest land creates a need for public services.

Mr. Kleaving indicated that these areas draw recreation and tourism business. There aren't many hotels or restaurants that typically might allow the county to capture taxes from these activities.

Mr. Schopmeyer suggested that they struggle with both inadequate revenue and tax fairness.

Ms. Lassaline said the assessed value under the Classified Forest program it is not equitable and is not keeping up with the times.

Mr. Schopmeyer said that when [taxation] is unfair, the government loses credibility and makes the assessor's job more difficult.

Councilor Larry Hesson asked if the federal payments in lieu of taxes value was determined each year.

Ms. Lassaline said the rate changes only a little every year. Mr. Kleaving said that the Shawnee National Forest in Illinois gets \$8-10 per acre. She indicated that they cannot budget for the federal payments because they are uncertain and variable.

Dave Burns (Wayne County): Mr. Burns began researching payments in lieu of taxes five years ago. He relied on a report from the Lincoln Institute. He believes the state should vet non-profits better. Indiana state codes are loose and he believes we have been taken advantage of. The treatment of non-profits creates both revenue and tax fairness issues.

Wayne County has faced lost assessed value with the purchase of a local hospital by a non-profit hospital. Reed Hospital is buying medical practices. There is an exempt senior housing complex that provide nice housing through lifetime leases. Earlham College is tax exempt and consumes local public services. Wayne County has pursued payments in lieu of taxes. Local non-profits have threatened to challenge. He believes that churches should remain exempt without fees. He suggested looking at the treatment in other states. In Pennsylvania, only building assessed value is exempt. In other places, non-profits pay voluntary payments in lieu taxes. He read a letter he had prepared (Attachment Q).

Lynn Dennis, The Nature Conservancy: Ms. Dennis clarified a few details about the Certified Forest and Wildland Program. The program provides important environmental services by providing land for timber and for wildlife. If owners remove lands from the program, they pay ten years in back taxes and a series of penalties. The penalty for selling certified lands is not enough incentive to keep owners from selling for development.

She indicated that the Nature Conservancy owns 30,000 acres in forty counties.

Mr. Vogt asked how many acres of Classified Forest are harvested for timber. Is the tax benefit fair given the economic benefit?

Ms. Dennis did not know how much of Classified Forest is timbered. She reminded that timber is a long-term (15-20 year) crop.

Councilor Hesson asked if the Nature Conservancy pay taxes.

Ms. Dennis indicated that they benefit from owning some Classified Forest. They pay full taxes in Newton County where they have a large prairie holding.

Representative Klinker asked if the Nature Conservancy worked with woodsmen.

Ms. Dennis said they have their own foresters. TNC uses forest to buffer natural assets. She indicated that TNC has created a forest bank. The timber value is deposited in the bank and owners are paid. The endeavor is not fully capitalized yet.

David Bottorff, Association of Indiana Counties: Mr. Bottorff reiterated that tax fairness is an issue.

The federal government established a payment in lieu of taxes program in the 1970s. Money is distributed based on the current federal budget and a formula. Western states get most of that money. The Rural Schools Act provides revenue from timber harvesting.

The Classified Forest and Wildlands Program was created in the 1920s. If the assessment level is adjusted for inflation, the value would be about \$13/acre. The State Forestry Division of DNR has been working on a strategic plan. They have proposed establishing an administrative fee of \$2 per acre. Locals would get 20% of the fee. The fee would allow DNR funds to do additional enforcement.

He is concerned about the expansion of non-profit properties, especially hospitals and nursing homes. He mentioned a policy discussion in the last legislative session about providing tax relief for for-profit hospitals to address advantages given to non-profit hospitals.

He indicated that local assessing officials feel pressured to negotiate with owners who challenge assessments. They often don't feel supported when cases are appealed to the state board or the tax court.

Tim Kennedy, Indiana Hospital Association (Hall, Render, Killian, Heath & Lyman, P.C.): Mr. Kennedy provided additional information. Medical office buildings are on the tax rolls and are difficult to take off. The benefit provided to for-profit hospitals during the legislative session were against their state income tax liability.

The Indiana Hospital Association believes that charging property taxes or fees to non-profit hospitals diminishes the security and welfare of the community because non-profits are part of the welfare of the community. Indiana law's definition of non-profit is influenced by federal government. He read an excerpt from the *College Corner, L.P. v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905, 910 (Ind. Tax Ct. 2006). Non-profit hospitals are a charitable activity that relieves government of burden.

He indicated that the U.S. Internal Revenue Service is getting more aggressive about private inurement (used of non-profits funds for the benefit of insiders rather than exempt purposes). This includes reviewing the pay of non-profit executives. Indiana hospitals use a process that solicits recommendations from a group of outsiders to establish executive salaries.

For hospitals to retain a 501(C)(3) status they must take all Medicare and Medicaid patients. They must provide emergent care for any patients who walk through their doors. Since the Affordable Care Act, they also are required to do community health assessments and work on the identified local health priorities. They also must have financial assistance programs in place. Typically, that means that they forgive a certain amount of the cost of unpaid care or they allow arrangements such as payment plans.

The Indiana Hospital Association is concerned about 2015 HB 1355 particularly because there are no limits on the level of payment. They prefer that communities negotiate directly with hospitals.

TOPIC: WAYS TO ENCOURAGE LOCAL GOVERNMENT TO UTILIZE CURRENT TOOLS FOR IMPROVED EFFICIENCY AND EFFECTIVENESS

This issue was postponed until the next meeting.

NEXT MEETING

The next meeting will be December 1, 2015, at 9:00 a.m. in Statehouse Room 404 (Ways & Means).

ADJOURNMENT

Chairman Messmer adjourned the meeting at approximately 12:25 p.m.