

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
)SS:
COUNTY OF MARION) CAUSE NO.: _____

STEVEN COLLIER, in his official
capacity as Mayor of the City of
Lawrence, Indiana,

Petitioner,

v.

TYRRELL GILES,
RICK WELLS,
SHERRON FREEMAN,
MARIA RUSOMAROFF,
TOM SHEVLOT,
LAUREN RUSSEL,
LISA CHAVIS,
SHAWN DENNEY, and
DEBORAH WHITFIELD, each in their
official capacity as Members of the
Lawrence Common Council,

Respondents.

PETITION FOR DETERMINATION OF POWERS

Petitioner Steven Collier, as Mayor (the “Mayor”) of the City of Lawrence, Indiana (the “City”), in support of his Petition for Determination of Powers pursuant to Indiana Code § 36-4-4-5 against the members of the Common Council of the City of Lawrence, Indiana (the “Council”) alleges the following:

Introduction

1. This Petition relates to City Ordinance No. 2, 2023, attached hereto as **Exhibit A**, (the “Disputed Ordinance”), which the Council adopted on March 6,

2023, the Mayor vetoed on March 17, 2023, and the Council overrode Mayor's veto on March 22, 2023.

2. The Disputed Ordinance purports to unilaterally appropriate additional taxpayer funds in excess of the City's approved 2023 Budget, without the Mayor's recommendation, as required by Ind. Code § 36-4-7-8.

3. The Mayor seeks a determination that the Council cannot unilaterally *increase* appropriations without first obtaining his recommendation as required by applicable law.

Parties

4. Petitioner Steven Collier is the duly elected Mayor of the City of Lawrence, Marion County, Indiana, a second class city pursuant to Ind. Code § 36-4-1-1. As mayor, Petitioner serves as the city executive pursuant to Ind. Code § 36-4-5-2.

5. Respondents Tyrrell Giles, Rick Wells, Sherron Freeman, Maria Rusomaroff, Tom Shevlot, Lauren Russel, Lisa Chavis, Shawn Denney, and Deborah Whitfield are the duly elected members of the Common Council of the City of Lawrence, Marion County, Indiana, which is the legislative body for the City under Ind. Code § 36-4-6-2.

Factual Background

6. The Disputed Ordinance reflects the most recent culmination of an underlying dispute between the Council and the Mayor's administration since early December 2022.

7. The underlying dispute is the Council's investigation and rehashing of the circumstances surrounding the City's budget approval process in Fall 2021, which resulted in the City's 2022 budget reverting to the prior year's (2021) levels.

A. The City's 2022 Budget Approval Process and Reversion to 2021 levels.

8. In September 2021, the Mayor's administration submitted a proposed budget ordinance (the "Budget Ordinance") to the Council, pursuant to Ind. Code § 36-4-7-7, proposing General Fund expenditures of approximately \$27.8 million for 2022.

9. Upon review, however, members of the Council wanted to reduce proposed 2022 General Fund spending by \$3.6 million, which would set the General Fund budget at \$24.2 million. The administration did not find the proposed cuts acceptable due to the negative impact on public safety, City employee salaries, and the ability to fund needed parks and other City projects.

10. In the weeks that followed, the Council requested the administration to identify where cuts could be made, but the administration advised the Council that, while the Council had authority to make cuts to the proposed budget, the administration did not support the proposed cuts and was not obligated to assist the Council in doing so.

11. In October 2021, the Council introduced an amendment to the Budget Ordinance, making cuts in specific line items in the General Fund that totaled \$3.6 million. These General Fund reductions included cuts to the Police Category of more than \$250,000 and cuts to the Fire Category of more than \$200,000.

12. A few days before the Council was scheduled to adopt a final version of the Budget Ordinance, the Mayor sent the Council a communication detailing the negative impact the Council's cuts would have on public safety, City employee salaries, and anticipated City projects. The Mayor's communication also stated that if the Council did not adopt a complete budget by November 1, 2021, "then by statute¹ the City will revert to the 2021 budget."

13. On October 25, 2021, the Council again amended the Budget Ordinance (the "Final Budget Ordinance"), reducing the original Budget Ordinance by a total of \$6.45 million, with \$3.6 million in cuts to the General Fund, \$1.85 million in cuts to the Stormwater Fund, and \$1.0 million in cuts to the Administrative Services Fund.

14. However, unlike the Council's first amendment to the Budget Ordinance, the Final Budget Ordinance failed to provide line-item information to allocate the proposed cuts to specific line items in the General Fund, which the Council is required to include in a budget ordinance pursuant to Ind. Code § 36-4-7-9.

15. In the hours preceding the October 25, 2021, Council meeting, the City's Deputy Controller corresponded with Baker Tilly, the Council's financial advisor, about the lack of line-item information in the Final Budget Ordinance. Baker Tilly acknowledged that the budget line-item information was necessary to complete the

¹ Ind. Code §§ 36-4-7-11 and 6-1.1-17-5(f).

process. Baker Tilly indicated it would update the Deputy Controller after it had an opportunity to discuss the specific reductions with the Council.

16. Two days later, the Council's attorney confirmed by email that the Final Budget Ordinance approved by the Council was the final effective version of the Council's action on the budget and further confirmed that "all of the specific line-item changes to the General Fund by Department" had been removed in the final version.

17. On November 4, 2021, the Mayor vetoed the Final Budget Ordinance, and the Council overrode the veto on November 17, 2022.

18. Despite prior assurances by the Council's financial advisor, the Council never provided the required line-item information for the Final Budget Ordinance.

19. Based on this lack of detail required by Ind. Code § 36-4-7-9, the Controller believed he was unauthorized, and thus unable, to unilaterally create the line-item detail information necessary to submit the Final Budget Ordinance to the Department of Local Government Finance ("DLGF") via the required Gateway platform, which does not provide for the omission of line-item detail.

20. On January 6, 2022, the DLGF issued the 2022 Certified Budget Order, a public document, reflecting that the City's 2022 budget was restricted to its prior year's (2021) budget due to failure to submit proper budget forms. As a result, the DLGF's budget order for 2022 established the City's reverted General Fund budget at \$25.7 million.

21. The statutory notice of the tax rate for the 2022 budget was subsequently published three times in two separate newspapers, all carrying the prior 2021 budget figures.

22. On May 2, 2022, the Council's financial advisor made a PowerPoint presentation to multiple members of the Council, which contained the DLGF's 2022 Budget Order which stated no less than eight times that the City's 2022 budget was restricted to the prior year's total due to failure to submit budget forms to the DLGF. An excerpt of this power point presentation is attached hereto as **Exhibit B** (see pp. 37–38).

23. Moreover, in preparation for the 2023 budget cycle, both the administration and the Council's own financial advisor held multiple budget workshops and presentations during Summer 2022 mentioning the reverted budget and using the reverted budget numbers.

B. The Council Claims Surprise at the 2022 Budget Reversion and Opens an Investigation.

24. Despite these multiple documented instances of referring to the reverted budget and the publication of budget notices showing figures consistent with the 2021 budget, the Council nevertheless asserted it had no knowledge until some point in November 2022 that the City's 2022 Budget had reverted to 2021 levels.

25. As a result, on December 1, 2022, the Council adopted a resolution stating its intent to investigate why its Final Budget Ordinance was not certified to the DLGF and what caused the reversion to the City's 2021 budget levels.

26. On January 25, 2023, the administration's attorneys circulated a memorandum ("Budget Memorandum") explaining to the Council and its attorneys the above facts and circumstances of the 2022 budget approval process that led to the reversion, including the fact that the Council failed to pass a budget ordinance compliant with Indiana law.

27. Nevertheless, on January 25, 2023, the Council adopted another resolution invoking its authority under Ind. Code § 36-4-6-21 and authorizing its attorneys to issue document and deposition subpoenas to the Mayor and the Controller, which were served the next day. The Council's attorneys later issued and served a document and deposition subpoena to the Deputy Controller and are seeking to depose several additional individuals as well.

28. On February 3, 2023, and February 16, 2023, the Council's attorneys deposed the Mayor, the Controller, and the Deputy Controller under oath, which confirmed the same facts outlined in the administration's Budget Memorandum. In advance of the depositions, the Mayor, Controller, and Deputy Controller each provided subpoenaed documents to the Council and its attorneys.

C. The Council's Unfunded Investigation Costs

29. At a special Council meeting on December 1, 2022, and in connection with its resolution to institute an investigation of the administration, the Council adopted a separate resolution pursuant to Ind. Code § 6-1.1-18-6 purporting to transfer roughly \$250,000 from one budget classification to another to fund its investigation (the "Transfer Resolution").

30. Later at the same meeting, the Council took a voice vote requesting the law firm of Bose McKinney & Evans (“Bose”) to provide an engagement letter to the Council to perform the 2022 budget investigation on the Council’s behalf.

31. On December 12, 2022, the Mayor vetoed the Transfer Resolution, and the Council overrode his veto the same day.

32. The administration’s attorney later pointed out that the Council’s Transfer Resolution was ineffective because Ind. Code § 6-1.1-18-6(a)(3) requires that any such transfer be exercised at a *regular* public meeting, not at a *special* meeting.

33. The administration’s attorney also pointed out that the oral motion to engage Bose was likewise ineffective under the City’s Municipal Code § 1-2-2-9(b), which authorizes the Council to engage counsel “only after the Common Council has adopted a resolution authorizing such a contract.” Moreover, any such resolution is subject to the Mayor’s veto pursuant to Ind. Code §§ 36-4-6-14 and -16.

34. As a result of these defects, at its regular February 6, 2023, meeting, the Council approved a formal resolution to engage Bose to assist with the Council’s 2022 budget investigation (the “Bose Resolution”).

35. However, by February 6, 2023, the Council had already spent or encumbered the vast majority of its 2023 professional services budget, including other payments to Bose and other contracts with Bose.

36. As a result, the Council’s professional services budget was and is insufficient to engage Bose or other professionals—whether for the investigation or otherwise.

37. At the same February 6th meeting, the Council also introduced the Disputed Ordinance. The Disputed Ordinance purports to make additional appropriations of \$250,000 for the Council’s professional services budget to fund its investigation.

38. The administration’s attorneys, however, had informed the Council just a few days earlier that, based on Ind. Code § 36-4-7-8, “the Council may not legally adopt an additional appropriation without first receiving the recommendation to do so” from the Mayor. The administration’s attorneys also advised that the Mayor was **not** providing a recommendation for the appropriation indicated in the Disputed Ordinance.

39. Unlike the Council’s prior Transfer Resolution, the Disputed Ordinance purports to appropriate funds not included in the 2023 budget, rather than transferring existing appropriations from one budget classification to another.

40. On February 16, 2023, the Mayor vetoed the Bose Resolution. In his written veto message to the Council, the Mayor explained he was vetoing the resolution because the Council did not have sufficient appropriations to pay for Bose’s legal services, as required by Ind. Code § 36-4-8-12(b).

41. The Mayor’s veto message reiterated that the Council may appropriate additional funds pursuant to Ind. Code § 36-4-7-8, but only upon recommendation of the Mayor. He stated that “the Council **must** request and receive a Mayoral recommendation before passing an additional appropriation ordinance. Only at that point will I consider this Resolution for approval.”

D. The Council Passes the Disputed Resolution Without the Mayor’s Recommendation

42. Despite the identified flaw in the proposed Disputed Ordinance, on March 6, 2023, at a regular meeting, the Council adopted the Disputed Ordinance on final passage purporting to authorize—without the Mayor’s recommendation—an additional appropriation of \$250,000 to fund its investigation.

43. On March 17, 2023, the Mayor vetoed the Disputed Ordinance, and on March 22, 2023, the Council voted to override his veto.

44. The budget procedures for second class cities are governed by Ind. Code §§ 36-4-7-1 *et. seq.* Indiana Code § 36-4-7-8 provides:

After the passage of the appropriation ordinance [i.e., the original budget], the city legislative body may, *on the recommendation of the city executive*, make further or additional appropriations by ordinance, unless their result is to increase the tax levy set under IC 6-1.1-17. The legislative body may, by ordinance, decrease any appropriation. The executive may, by executive order, decrease the appropriation made for any executive department.

(Emphasis added.)

45. The effect of this statute is that it authorizes *either* the executive or the legislative body to unilaterally *decrease* an appropriation, but an *increase* in appropriations requires *both* executive and legislative branch action.

46. Further, Indiana Code § 36-4-4-4 provides that “The legislative body may manage the finances of the city **to the extent that that power is not vested in the executive branch.**” (Emphasis added.) Here, the power to recommend additional appropriations is vested by statute exclusively in the City’s executive—the Mayor.

47. The Council adopted the original 2023 budget ordinance as City Ordinance No. 26, on October 20, 2022. The Disputed Ordinance purports to make further or additional appropriations after the passage of the original 2023 budget without the Mayor's recommendation in violation of its authority under Indiana Code § 36-4-7-8.

Request for Relief and Grounds Therefor

48. Indiana Code § 36-4-4-5 provides:

If uncertainty exists or a dispute arises concerning the executive or legislative nature of a power or duty exercised or proposed to be exercised by a branch, officer, department, or agency of the government of a municipality, a petition may be filed in the circuit court or superior court of the county in which the municipality is located by the municipal executive....

49. Pursuant to this statute, Petitioner Steven Collier, as Mayor of the City of Lawrence, Indiana, seeks a determination by the Court that:

- a. Pursuant to Indiana Code § 36-4-7-8, the Council may not unilaterally exercise its legislative authority to make additional appropriation of funds without the Mayor's recommendation;
- b. As a result, the Mayor's recommendation is an executive power, which he may withhold at his sole discretion; and
- c. The Disputed Ordinance lacks the Mayor's recommendation, and as a result, is null and void.

50. Moreover, pursuant to Ind. Code §§ 34-14-1-1 et seq. (the Indiana Uniform Declaratory Judgment Act), Petitioner further requests the Court to determine and declare that:

- a. In the 2022 Final Budget Ordinance the Council failed to provide the line-item detail required by Ind. Code § 36-4-7-9, which provides: “An appropriation ordinance must specify, by items, the amount of each appropriation and the department for which it is made.”
- b. As a result of this omission, the Final Budget Ordinance did not comply with Indiana law and was thus invalid.

Respectfully submitted,

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