

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

IN THE MATTER OF THE REQUEST OF THE)
CITY OF CARMEL, HAMILTON COUNTY,) A23-074
FOR AN INCREASE IN ITS MAXIMUM LEVY)
DUE TO AN EMERGENCY)

The Department of Local Government Finance (“Department”) has reviewed the City of Carmel’s (“City”) appeal for an excess levy in the amount of \$8,500,000 due to an alleged emergency. Ind. Code § 6-1.1-18.5-13(a)(3) provides that a maximum levy increase may be granted by the Department “if the civil taxing unit cannot carry out its governmental functions for an ensuing calendar year . . . due to a natural disaster, an accident, or another unanticipated emergency.”

The City claims in its appeal that Ind. Code § 6-3.6-11-9, first enacted by the Indiana General Assembly in 2020, reallocated a portion of the City’s local income tax (LIT) distributions for 2021 through 2023 to the City of Fishers (“Fishers”). According to the City, Ind. Code § 6-3.6-11-9 explicitly stated the allocation was for the period “after 2020 and before 2024,” however the City claims that “[i]n 2023, legislation was unexpectedly enacted to extend the reallocation to years 2024 and 2025.” The City then states that due to the amendment of Ind. Code § 6-3.6-11-9 in 2023, \$8.5 million of LIT revenue will be reallocated from the City to Fishers.

The City claims that the amendment of Ind. Code § 6-3.6-11-9 qualifies as an “unanticipated emergency” under Ind. Code § 6-1.1-18.5-13(a)(3). The City argues that the amendment was “unanticipated” because the City was unable to prepare for the consequences of the amendment of Ind. Code § 6-3.6-11-9 during the 2023 session, citing to the City having already prepared its 2023 budget and did not anticipate “an unfavorable 2024 LIT formula, but rather anticipated just the opposite.” The City then argues that the amendment “was or is an emergency” by referencing the following definition of “emergency”:

“[A]n urgent, sudden, and serious event or an unforeseen change in circumstances that necessitates immediate action to remedy harm or avert imminent danger to life, health, or property; an exigency.”

The City makes the following statements as to why an emergency exists based on this definition:

- There is “urgent, sudden, and immediate action” because the structure of the property tax system does not allow for application of an excess levy to be applied until the ensuing tax year, which in this case is 2024. In other words, for purposes of an emergency excess levy appeal, the term “urgent, sudden, and immediate action” should be understood to mean an emergency occurring in the immediately ensuing tax year. The City will experience the reallocation of LIT revenue as a result of the amendment in 2024, which according to the City is “urgent, sudden, and immediate.
- The loss of \$8.5 million to the City is serious, on its face.

- There is “imminent danger to life, health, or property” because according to the City, “[m]ost of [the City’s] revenue is devoted to public safety . . . Practically all of the remainder of [the City’s] budget is devoted in some way to the health and physical welfare of residents, . . . Accordingly, danger to life, health, and property are at issue in the loss of \$8.5 million for these purposes.
- The danger is “imminent” in the sense that the danger can be expected to occur under the proposed budget.

Finally, the City claims that its expected general fund revenue for 2024 is \$137.6 million, of which \$16.5 million is needed to pay for debt service on LIT funded bonds. The City claims that it cannot absorb a \$8.5 million loss to the balance of the general fund revenue (\$121.1 million) because of the economic effects of the pandemic and a recession.

In consideration of the City’s appeal, the Department finds as follows:

First, the Department does not, as a rule, accept a general or widespread event as justification for an appeal. The City acknowledged in its statement of need that both the pandemic and recession affected not only itself but “the rest of the world.” The Department’s annually issued excess levy appeal memorandum, lists “pervasive unemployment or poverty resulting from a generally weak local or national economy” and “a general impact to governmental functions due to COVID” as examples of what the Department will not consider for an emergency excess levy appeal. Rather, the unit must point to a “specific, localized, quantifiable impact” which neither the pandemic nor a recession would qualify.

Second, while the Department will not here place limits on what constitutes an “unanticipated emergency” under Ind. Code § 6-1.1-18.5-13(a)(3), the Department is hesitant to identify an act of the legislature as an emergency, in and of itself. In any given session, the General Assembly has the prerogative to make policy decisions that may have intended or unintended consequences on a local unit’s budget. In which case, any unit so affected by legislation may or may not have anticipated those consequences. That does not make such consequences an “emergency.”

Third, the Department is skeptical that the amendment of Ind. Code § 6-3.6-11-9 is “unanticipated.” The Indiana legislature has the prerogative to extend the application of laws to meet their policy goals. For example, the waiver of implementation of protected taxes statute for school corporations (Ind. Code § 6-1.1-20.6-9.9) has been amended several times to extend its initial sunset year of 2016 all the way through 2026. Ind. Code § 6-3.6-11-9 has been similarly amended. It therefore cannot be said that such an amendment is “unanticipated.”¹

Fourth, the Department is skeptical that the amendment is an “emergency.” As noted above, the legislature enacts into law policies that may have a positive or negative fiscal impact on any one local

¹ The City in its appeal provided a letter, dated February 26, 2020, from Representative Jerry Torr to then Speaker-Elect Todd Huston wherein it states if a GIS-based LIT distribution system is not in place by 2024 “it is understood there will be a return to the current LIT distribution formula.” As is the practice in this state, the Department can only look to the plain language of Ind. Code § 6-3.6-11-9, and fiscal notes from the enacting legislation, to ascertain legislative intent. The Department therefore declines to consider this letter to ascertain the legislative intent behind enacting Ind. Code § 6-3.6-11-9 in 2020 or amending it in 2023.

unit's budget. Should the City's instance be an emergency, the same could then be said of local units affected by any number of pieces of legislation.²

Fifth, the City, in its appeal, included its Council Resolution CC-10-16-23-01, adopted on October 16, 2023. This resolution recommends submission of the emergency excess levy appeal³, but also advises the Department to "set the total 2023 City tax rate, for all City funds, so as not to exceed \$0.7877 per \$100 of assessed value." By its application, an excess levy will increase a unit's tax rate, all other things equal.⁴ The Department is skeptical of the City's emergency excess levy appeal when the City both wants the Department to increase its levy (and therefore its tax rate) while also controlling its tax rate from going up to a level the City does not want it to go. This makes it appear that the City is willing to accept some or even all of the loss in LIT revenue to the extent the excess levy amount would in turn be lost after applying the controlled rate.

Finally, the City has filed an action in Marion County Superior Court seeking declaratory relief and a preliminary injunction on application of Ind. Code § 6-3.6-11-9.⁵ As of the date of this Order, the litigation is pending. Should the Court grant a preliminary injunction and declaratory relief, or both, for the City, such that application of Ind. Code § 6-3.6-11-9 will not occur in 2024, then the City's claim of an emergency for which to receive an excess levy becomes moot.

Therefore, after a review of the petition, the Department, pursuant to Ind. Code § 6-1.1-18.5-12 and Ind. Code § 6-1.1-18.5-13(a)(12), and in consideration of all evidence provided, finds that there is no emergency for which the City is entitled to relief from levy limits under Ind. Code § 6-1.1-18.5-13(a)(3). The Department therefore **DENIES** the appeal.

This Order of the Department is subject to judicial review under Ind. Code § 6-1.1-18.5-15.

STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

WITNESS MY HAND AND SEAL of this Department on this 15 day of November,
2023.



Daniel Shackle, Commissioner

² The Department declines to accept the City's cited-to definition of "emergency" here. While the definition is reasonable on its face, it is not at all found in Ind. Code § 6-1.1-18.5-13. In addition, the City's application of that definition broadens the meanings of at least some of its component terms to a point where they are effectively meaningless.

³ The resolution also indicated an expected loss of \$8.3 million from the amendment of Ind. Code § 6-3.6-11-9, which is \$200,000 less than what the City requested in this appeal. The discrepancy did not affect the Department's decision of the City's appeal.

⁴ The Department estimates increasing the City's levy by the amount of the appeal (\$8,500,000) would raise its tax rate by \$0.0779 per \$100 assessed value. The City's resolution also indicates the City's intent to file a shortfall appeal under Ind. Code § 6-1.1-18.5-16. The Department will also take this rate control into consideration if and when the City submits the shortfall appeal.

⁵ *City of Carmel vs. Comm'r of Dep't of Rev., et al.*, 49D05-2307-PL-028939 (filed July 24, 2023).