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IN THE  
COURT OF APPEALS OF INDIANA

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Lake County Board of  
Commissioners,  
*Appellant-Defendant,*

v.

Lake County Council,  
*Appellee-Plaintiff.*

July 12, 2022

Court of Appeals Case No.  
21A-MI-1805

Appeal from the Lake Superior  
Court

The Honorable John M. Sedia,  
Judge

Trial Court Cause No.  
45D01-2011-MI-766

**Bradford, Chief Judge.**

## Case Summary

- [1] The Lake County Council (the “Council”) adopted Ordinance Numbers 1451B and 1451M (“Ordinance No. 1451B” and “Ordinance No. 1451M”) in October of 2020. In Ordinance No. 1451B, the Council established itself as the purchasing agency for Lake County. Ordinance No. 1451M created a data-processing agency. The Lake County Board of Commissioners (the “Commissioners”) subsequently vetoed these ordinances, and the Council overrode the vetoes.
- [2] On November 6, 2020, the Council filed a complaint for declaratory judgment. The parties filed competing summary judgment motions in which they disputed whether the Council or the Commissioners has the statutory authority to act as the purchasing agency and to create a data-processing agency. On April 16, 2021, the trial court granted the Council’s motion and denied the Commission’s motion. The trial court also denied the Commission’s subsequent motion to correct error. On appeal, the Commissioners contend that the trial court abused its discretion by denying their motion to correct error. We affirm.

## Facts and Procedural History

- [3] On October 13, 2020, the Council adopted Ordinance No. 1451B, establishing itself as the purchasing agency of Lake County. Ordinance 1451B provides, in relevant part, as follows:

## A. ESTABLISHMENT.

Pursuant to I.C. 5-22-4-5(a) the purchasing agency for a political subdivision is the person designated by law or by the rule of a governmental body. Pursuant to I.C. 36-1-3.5-5(b)(3) the Lake County Council is hereby established as the purchasing agency for Lake County, Indiana for the purchase of all or certain services, supplies, materials and equipment as under existing laws are permitted to be purchased with County funds for any or all purposes. The agency shall be known as the Lake County Purchasing Agency. Any prior motion, resolution or ordinance and its amendments establishing a County Purchasing Agency for Lake County, Indiana is rescinded and repealed.

## B. POWERS AND DUTIES.

The Purchasing Agency shall have the powers and duties afforded it by the Lake County Council. In determining and defining the powers and duties, the Lake County Council shall formulate, and enter of record in the County records, a statement prescribing and defining clearly and succinctly the field of activity of the agency, setting forth the types of purchases authorized to be made with County funds.

The term “Purchase” as defined by I.C. 5-22-2-24 shall include the following:

1. “Purchase” includes any buy, procure, rent, lease or otherwise acquire.

The term includes the following activities:

1. Description of requirements;
2. Solicitation or selection of sources;
3. Reparation and/or award of contracts;
4. All phases of contract administration;
5. All functions that pertain to purchasing.

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#### D. AGENCY PERSONNEL.

The personnel of the Agency shall consist of a Purchasing Agent and any other employees as shall be deemed reasonably necessary for the operation of the Agency. The Purchasing Agency may have more than one Purchasing Agent. The Lake County Council shall determine the qualifications required for the personnel. The number and annual compensation of the personnel, including the Purchasing Agent, shall be determined by the County Council.

#### E. APPOINTMENT OF PURCHASING AGENCY.

The Lake County Council shall appoint one or more Purchasing Agents....

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#### K. BUDGET.

The Council shall adopt a budget annually which shall contain an estimate of the amount of money which will be needed by the Council and the Agency during the coming fiscal year to cover the expenses and obligations incurred and to be incurred. The budget shall be prepared, filed and funded in the same manner and form and at the same time as the budgets and estimates of other county offices, departments and agencies.

Appellant's App. Vol. III pp. 120–23.

- [4] The Lake County Auditor presented Ordinance 1451B to the Commissioners on October 27, 2020. The Commissioners vetoed Ordinance 1451B on October 30, 2020. The Council voted to override the veto on November 10, 2020.
- [5] On October 21, 2020, the Council adopted Ordinance No. 1451M, establishing the Lake County Data Processing Agency. In adopting Ordinance No. 1451M, the Council found “that the establishment of a County government agency and board to coordinate the operations of the various data processing systems in Lake County [was] necessary for the economic welfare of the citizens of Lake County, Indiana.” Appellant’s App. Vol. III p. 128. Ordinance 1451M provided that the Data Processing Agency “shall be administered by a board known as the Lake County Data Processing Agency Board.” Appellant’s App. Vol. III p. 129. “The Board shall consist of 15 members appointed by” the Council and “shall include” various county officials. Appellant’s App. Vol. III pp. 129, 130.
- [6] The Lake County Auditor presented Ordinance 1451M to the Commissioners on October 27, 2020. The Commissioners vetoed Ordinance 1451M on October 30, 2020. The Council voted to override the veto on November 10, 2020.
- [7] On November 6, 2020, the Council filed a complaint for declaratory judgment. On November 23, 2020, the Commissioners filed an answer and counterclaim for declaratory and injunctive relief. The Commissioners filed an amended answer on December 23, 2020. The parties subsequently filed competing

motions for summary judgment. Following a hearing, on April 16, 2021, the trial court granted the Council’s motion for summary judgment and denied the Commissioners’ motion for summary judgment. On May 10, 2021, the Commissioners filed a motion to correct error, which was denied by the trial court on July 23, 2021. At the request of the Commissioners, the trial court stayed implementation of its April 16, 2021 order pending appeal.

## Discussion and Decision

[8] The Commissioners contend that “[t]his case concerns whether the [Council] can usurp specific statutory powers expressly granted to the [Commissioners] to enact ordinances relating to a county purchasing agency and data processing agency without violating Home Rule.” Appellant’s Br. p. 7. The Council contends that Indiana Code section 36-1-3.5-5 “explicitly transferred jurisdiction over the Lake County purchasing agency and the Lake County data processing agency from” the Commissioners to the Council. Appellee’s Br. p. 7.

### I. Overview of Structure of Lake County Government

[9] In 1981, the Indiana General Assembly adopted a number of statutes relating to the structure of county government. In outlining the purpose of the new statutes, Indiana Code section 36-1-3.5-1 provides as follows:

The policy of the state is that in all cases where a general law can be made applicable, all laws should be general and of uniform operation throughout the state, as provided by Article 4, Section

23 of the Constitution of Indiana. In addition, the policy of the state is that in local affairs where a general law cannot be made applicable, the applicable laws should be determined by the local legislative authorities under the home rule provisions of this title, particularly IC 36-1-3-6.<sup>[1]</sup> Therefore, the purpose of this chapter is to transfer to the appropriate local authorities jurisdiction over certain local matters that, before the 1981 regular session of the general assembly, have been subjects of statutory concern.

Indiana Code section 36-2-3.5-2 provides that “[t]he powers of the county are divided between the executive and legislative branches of its government. A power belonging to one (1) branch of the county’s government may not be exercised by the other branch.” “The board of commissioners ... is the county executive. The county council ... is the county legislative body as well as the county fiscal body.” Ind. Code § 36-2-3.5-3.

[10] With respect to the powers of the executive branch, Indiana Code section 36-2-3.5-4 provides as follows:

(a) All powers and duties of the county that are executive or administrative in nature shall be exercised or performed by its executive, except to the extent that these powers and duties are expressly assigned to other elected officers.

(b) The executive shall:

(1) report the state of the county annually before March 1 to the county legislative body and to the people of the county;

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<sup>1</sup> Indiana Code section 36-1-3-6 outlines the specific manner for exercising the power to adopt local ordinances.

- (2) recommend annually before March 1 to the legislative body whatever action or program it considers necessary for the improvement of the county and the welfare of its residents;
- (3) submit to the legislative body an annual budget in accordance with IC 36-2-5;
- (4) establish the procedures to be followed by all county departments, offices, and agencies under its jurisdiction to the extent these procedures are not expressly assigned to other elected officers;
- (5) administer all statutes applicable to the county, and its ordinances and regulations, to the extent these matters are not expressly assigned to other elected officers;
- (6) supervise the care and custody of all county property;
- (7) supervise the collection of revenues and control all disbursements and expenditures, and prepare a complete account of all expenditures, to the extent these matters are not expressly assigned to other elected officers;
- (8) review, analyze, and forecast trends for county services and finances, and programs of all county governmental entities, and report and recommend on these to the legislative body by March 15 each year;
- (9) negotiate contracts for the county;
- (10) make recommendations concerning the nature and location of county improvements, and provide for the execution of those improvements;
- (11) supervise county administrative offices except for the offices of elected officers; and
- (12) perform other duties and functions that are imposed on it by statute or ordinance.

(c) The executive may:

- (1) order any agency under its jurisdiction to undertake any task for any other agency under its jurisdiction on a temporary basis, if necessary for the

- proper and efficient administration of county government;
- (2) approve or veto ordinances passed by the legislative body, in the manner prescribed by IC 36-2-4-8; and
- (3) establish and administer centralized budgeting, centralized personnel selection, and centralized purchasing.

[11] With respect to the powers of the legislative branch, Indiana Code section 36-2-3.5-5 provides as follows:

- (a) All powers and duties of the county that are legislative in nature shall be exercised or performed by its legislative body.
- (b) The legislative body may:
  - (1) establish the committees that are necessary to carry out its functions;
  - (2) employ legal and administrative personnel necessary to carry out its functions;
  - (3) pass all ordinances, orders, resolutions, and motions for the government of the county, in the manner prescribed by IC 36-2-4;
  - (4) receive gifts, bequests, and grants from public or private sources;
  - (5) conduct investigations into the conduct of county business for the purpose of correcting deficiencies and insuring adherence to law and county policies and regulations; and
  - (6) establish, by ordinance, new county departments, divisions, or agencies whenever necessary to promote efficient county government.

[12] However, specifically with respect to Lake County, Indiana Code section 36-1-3.5-5, which was originally adopted in 1981 but amended in 2012, provides as follows:

- (a) This section applies to Lake County.
- (b) Jurisdiction over the following local matters, which before the 1981 regular session of the general assembly have been subjects of statutory concern, is transferred to the legislative body of the county:
  - (1) Frequency of salary payments (formerly governed by IC 17-3-73-2).
  - (2) Mileage allowances for deputy county auditors (formerly governed by IC 17-3-29-1).
  - (3) County purchasing agency (formerly governed by IC 17-2-77).
  - (4) County data processing agency (formerly governed by IC 17-2-74).

## II. Standard of Review

### A. Summary Judgment

[13] Summary judgment is proper if the designated evidence shows there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. We will affirm the trial court's grant of summary judgment if it is sustainable on any theory or basis in the record. The fact that parties have filed cross-motions for summary judgment does not alter our standard of review. Questions of statutory construction are particularly appropriate for resolution by summary judgment, as they are pure questions of law. We review questions of law de novo and owe no deference to the trial court's legal conclusions. The party appealing the grant of summary judgment has the burden of persuading this court on appeal that the trial court's ruling was improper.

*Floyd Cty. v. City of New Albany*, 1 N.E.3d 207, 213 (Ind. Ct. App. 2014)  
(citations omitted), *trans. denied*.

## B. Motion to Correct Error

[14] “We will reverse a trial court’s grant or denial of a motion to correct error only for an abuse of discretion.” *In re G.R.*, 863 N.E.2d 323, 325 (Ind. Ct. App. 2007). “An abuse of discretion occurs when the trial court’s decision is against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law.” *Id.*

## III. Overview of the Law Relating to Statutory Interpretation

[15] Our goal in statutory interpretation is to determine and abide by the legislature’s intent. In doing so, we aim to determine and give effect to the intent of the legislature. We start with the plain language of the statute, giving its words their ordinary meaning and considering the structure of the statute as a whole. No word or part of the statute should be rendered meaningless if it can be reconciled with the rest of the statute. As we interpret the statute, we are mindful of both what it does say and what it does not say. To the extent ambiguity exists, we determine and give effect to the intent of the legislature as best it can be ascertained. We may not add new words to a statute which are not the expressed intent of the legislature.

*Ind. Alcohol & Tobacco Comm’n v. Spirited Sales, LLC*, 79 N.E.3d 371, 376 (Ind. 2017) (citations and quotation marks omitted). Further, “[w]hen two statutes on the same subject must be construed together, a court should attempt to give effect to both and must attempt to harmonize any inconsistencies or conflicts

before applying any other rule of statutory construction.” *Moryl v. Ransone*, 4 N.E.3d 1133, 1137 (Ind. 2014).

## IV. Analysis

### A. Allegedly Unlawful Transfer of Powers

[16] The Commissioners contend that “[b]y enacting Ordinance No. 1451B and Ordinance No. 1451M the Council seeks to unlawfully transfer to itself certain powers specifically assigned by statute to the Commissioners.” Appellant’s Br. p. 16. For its part, the Council asserts that Ordinance Nos. 1451B and 1451M “are a straightforward implementation of the General Assembly’s transfer of jurisdiction to the Council over purchasing and data processing made clear by the plain language of [Indiana Code section 36-1-3.5-5].” Appellee’s Br. p. 19.

[17] At the outset, we note that the Council did not grant itself the power to contract on behalf of Lake County, the General Assembly did. Although Indiana Code section 36-2-3.5-4 generally grants the authority to enter into contracts on behalf of the county and to establish and administer centralized budgeting and purchasing to the executive branch of county government, in detailing the responsibilities of the executive branch, Indiana Code section 36-2-3.5-4 provides that “[a]ll powers and duties of the county that are executive or administrative in nature shall be exercised or performed by its executive, *except to the extent that these powers and duties are expressly assigned to other elected officers.*” (Emphasis added). Indiana Code section 36-2-3.5-4 explicitly acknowledges the possibility that the General Assembly may transfer jurisdiction over some duties

that would normally be assigned to the executive branch to another governmental entity. In enacting Indiana Code section 36-2-3.5-5, the General Assembly did just that, specifically transferring jurisdiction over the county purchasing agency and the county data-processing agency in Lake County to the Council. Thus, we conclude the two statutes can be read harmoniously, *i.e.*, that while in some circumstances the responsibilities at issue may fall to the county executive, in Lake County, the responsibilities fall to the legislative branch, *i.e.*, the Council. Given the plain language of Indiana Code section 36-2-3.5-4, jurisdiction over the purchasing and data-processing agencies in Lake County falls squarely within the Council’s jurisdiction.

[18] Further, it is no matter that the Council waited to enact the ordinances.<sup>2</sup> In 1981, the Local Government Study Commission published an article entitled “Understanding the new local government law.” *See* IND 342.772 U58 (1981). Appendix III of the Commission’s article provided that an ordinance to exercise a power given by the 1981 local government laws “can be adopted at any time; failure to act before the deadline does not prohibit a unit from passing such an ordinance under its Home Rule powers at a later date.” *See* Appellant’s App.

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<sup>2</sup> The Council points out that the Commissioners did not argue laches before either this court or the trial court. (Appellee’s Br. p. 29) The Council also assert that it did not wait forty years to exercise its power, pointing to an ordinance adopted in 1997 that “expressly acknowledged [that] the Council had final approval over the negotiation of contracts on behalf of the Lake County Data Processing Agency and the Data Processing Board[,]” Appellee’s Br. pp. 29–30 (citing Ordinance No. 1164(A), which has been effective since 1997).

Vol. IV p. 65 (providing a copy of Appendix III of the Local Government Study Commission’s article) (underlining in original).

[19] The Council also asserts that the trial court’s determination is consistent with Title 5 of the Indiana Code, which deals with state and local administration. Title 5 defines the term “purchasing agency” as “a governmental body that is authorized to enter into contracts by this article, rules adopted under this article, or by another law.” Ind. Code § 5-22-2-25. Indiana Code section 5-22-4-5(a) provides that “[t]he purchasing agency for a political subdivision is the person designated by law or by the rule of the governmental body.” The Council argues that

Taken together, Title 36 and Title 5 transfer jurisdiction over the county purchasing agency to the Council, and that transfer encompasses all the powers listed in Ind. Code § 5-22-2-24, including the “[p]reparation and award of contract,” “[a]ll phases of contract administration,” and “[a]ll functions that pertain to purchasing.” Ind. Code § 5-22-2-24(b)(3)-(5). The Ordinances are simply a straightforward implementation of these statutes.

Appellee’s Br. p. 22 (brackets in original). To the extent that Title 5 is relevant to the instant matter, we agree with the Council that nothing in Title 5 would prevent the Council from being the governmental entity appointed by law to be/to oversee the purchasing agency for Lake County.

## **B. Meaning of the Word “Jurisdiction”**

[20] The Commissioners also assert that

The trial court erred in failing to address what the term “jurisdiction” meant within the context of [Indiana Code section] 36-1-3.5-5 and consequently whether the Ordinances were proper enactments.... The Council may have “jurisdiction” over the county processing agency and the county data processing agency. But, just because the Council has jurisdiction over certain subject matter does not mean that it can ignore statutory constraints on the exercise of that jurisdiction.

Appellant’s Br. p. 18. The Commissioners further assert that the Council “purports to usurp powers that the General Assembly specifically granted to the [Commissioners]” and “asks the Court to ignore specific powers and duties granted to the Commissioners by the General Assembly.” Appellant’s Br. p. 19.

[21] The Council acknowledges that a grant of jurisdiction is not a grant of unfettered power over a subject matter but asserts that it “hasn’t sought unfettered power.” Appellee’s Br. p. 22. The Council notes that “[t]he Commissioners argue it makes no sense that the General Assembly would, in the same legislative session, grant the Commissioners a certain power just to take it away in the very next section of the statute,” Appellee’s Br. p. 24 (citing Appellant’s Br. p. 25), but argue “that’s not what happened.” Appellee’s Br. p. 24. Again, we agree with the Council on this point.

[22] The term “transfer” means “[t]o convey or remove from one place or one person to another; to pass or hand over from one to another, esp. to change over the possession or control of.” BLACK’S LAW DICTIONARY p. 1803 (11<sup>th</sup> ed. 2019). It appears that prior to 1981, the Commissioners had complete

control over purchasing and data-processing agencies. During the 1981 session, the General Assembly enacted a series of statutes that, in some counties, transferred jurisdiction over those agencies to the legislative branch and, in other counties, to the executive branch. *See* Ind. Code §§ 36-1-3.5-5 through - 11; Ind. Code § 36-2-3.5-4. Indiana Code section 36-1-3.5-5 simply clarifies that in Lake County, jurisdiction of those agencies was transferred to the Council, *i.e.*, the legislative branch.

### **C. Public Policy Concerns – Separation of Powers**

[23] The Commissioners also argue that the trial court’s ruling is contrary to the public-policy interest in creating “a separation of powers and checks and balances for Lake County government.” Appellant’s Br. p. 21. Specifically, the Commissioners assert

Whatever [Indiana Code section] 36-1-3.5-5 means, it does not take away powers and duties expressly granted to the Commissioners as part of a system of checks and balances. [Indiana Code section] 36-1-3.5-5 does not grant the Council the power to negotiate contracts or “control all disbursements and expenditures.” It speaks only of jurisdiction generally.

Appellant’s Br. p. 21. The Commissioners further assert that

With the legislative reforms enacted in 1981, the General Assembly created checks and balances within Lake County government so that neither branch of county government could exercise unfettered authority over essential functions. After 1981, the Council has jurisdiction to exercise its legislative and financial powers over the county purchasing agency and the county data processing agency. For example, under [Indiana

Code section] 36-2-3.5-5(b)(5) it can investigate those agencies. It can even establish new agencies under [Indiana Code section] 36-2-3.5-5(b)(6). What it cannot do is exercise the powers and duties expressly granted to the Commissioners.

Appellant's Br. p. 22. The Council argues that, fundamentally, "there can be no separation of powers problem because the constitutional separation of powers principles applies only at the state, not at the county, level." Appellee's Br. p. 27.

[24] The Council is correct that both the Indiana Supreme Court and this court have held that the doctrine of separation of powers does not apply to municipal or local governments. *See State v. Buncich*, 51 N.E.3d 136, 144 (Ind. 2016) (providing that the doctrine of separation of powers relates solely to the state government and does not apply to local officers); *see also Baltimore & Ohio R.R. Co. v. Town of Whiting*, 161 Ind. 228, 233, 68 N.E. 266, 268 (1903) (same); *State v. Monfort*, 723 N.E.2d 407, 414 (Ind. 2000) ("[T]he separation of powers doctrine applies only to state government and its officers, not municipal or local governments"); *Willsey v. Newlon*, 161 Ind. App. 332, 333, 316 N.E.2d 390, 391 (Ind. Ct. App. 1974) ("It has repeatedly been held that the separation of powers doctrine ... has no application at the local level."). As such, we agree with the Council that there is no separation of powers issue here.

#### **D. Interpretation of Indiana Code section 36-2-3.5-4(a)**

[25] The Commissioners last argue that the trial court erroneously interpreted Indiana Code section 36-2-3.5-4(a). Again, this section provides that "[a]ll

powers and duties of the county that are executive or administrative in nature shall be exercised or performed by its executive, *except to the extent that these powers and duties are expressly assigned to other elected officers.*” Ind. Code § 36-2-3.5-4(a) (emphasis added). In making this argument, the Commissioners claim that Indiana Code section 36-1-3.5-5 only conferred jurisdiction and “does not *expressly* re-assign such powers as the power to budget and negotiate contracts.” Appellant’s Br. p. 24. For its part, the Council argues that the Commissioners’ interpretation “belies the plain language of the statute” as Indiana Code section 36-2-3.5-4(a) expressly applies to “[a]ll powers and duties of the county that are executive or administrative in nature.” Appellee’s Br. p. 25 (quoting Ind. Code § 36-2-3.5-4(a)).

[26] The Commissioners further assert that

A number of powers are assigned to the Commissioners in [Indiana Code section] 36-2-3.5-4(b) are not qualified by the phrase – “except to the extent that these powers and duties are expressly assigned to other elected officers” – including but not limited to the power to negotiate contracts. The implication is precisely the opposite of what the Council argues. That is that because the grant of the power to negotiate contracts is unqualified only the Commissioner may exercise that power and the other unqualified powers.

Appellant’s Br p. 25. For its part, the Council argues that the Commissioners’ “contention that the power to negotiate contracts is absolute and unqualified—and thus could never be assigned to another governmental body—is contradicted by other parts of the Indiana Code.” Appellee’s Br. p. 26 (citing

Ind. Code § 36-1-12.5-1.5(5) (providing that the power to contract with respect to certain projects lies with the legislative body)).

[27] The Commissioners last assert that

While each council member is an elected official, the Council is not an elected officer. It is a legislative *body*.... A sole member of the Council cannot bind the entire Council, unlike an elected officer who when they make a decision for their respective office, binds their office by that decision. Nothing in [Indiana Code section] 36-2-3.5-4(a) supports the notion that the Council can exercise powers expressly assigned to the Commissioners. [Indiana Code section] 36-1-3-6(a) therefore applies, and the Council is restricted from enacting an Ordinance changing [Indiana Code section] 36-2-3.5-4(b)(9).

Appellant’s Br. pp. 25–26 (emphasis in original). For its part, the Council argues that

As the Commissioners would have it, then, because the Council is a legislative body, not an “elected officer,” [Indiana Code section] 36-2-3.5-4’s caveat does not allow for the General Assembly to re-assign the power to the Council. This argument makes no sense. But more importantly, the Commissioners’ argument suggests that because the Council is not an “elected *officer*,” the caveat does not apply. But the caveat plainly applies where the General Assembly assigned the power to other “elected *officers*.” Of course, the Council is not an officer. It is a *body* of elected officers—just as the statute says.

Appellee’s Br. pp. 26–27 (emphases in original). Upon review of the relevant statutes, we are convinced that the Council’s interpretation of these statutes fits

better with the stated intent of the General Assembly, as expressed in Indiana Code section 36-2-3.5-4(a).

## Conclusion

- [28] For the reasons stated above, we conclude that the trial court did not abuse its discretion by denying the Commissioners' motion to correct error as its award of summary judgment in favor of the Council was proper.
- [29] The judgment of the trial court is affirmed.

Najam, J., and Bailey, J., concur.