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CLASSIFICATION OF CITIES AND TOWNS

While the words "city" and "town" are used interchangeably in everyday conversation, they have specific legal meanings when applied to Indiana municipal governments (the word "municipality" applies to both cities and towns). See, IC 36-1-2-1 et seq., Definitions of General Applicability. Cities and towns are municipal corporations authorized by state law and incorporated pursuant to specific statutory procedures. While these corporations share some of the characteristics of private businesses and charitable corporations, they are governed largely by specific statutes applicable to municipalities.

Cities

By statute (IC 36-4-1-1) Indiana's cities are divided into classes based solely on their population as of the last United States decennial census (which occurred in 2000). The classes are:

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| First class | 250,000 and more |
| Second class | 35,000 to 249,999 |
| Third class | Less than 35,000 (except as noted below) |

Indianapolis is the only first class city. Under IC 36-3, it is also a consolidated city, a form of government in which the powers of the mayor of the city and the powers of the county executive are consolidated and vested in the mayor, and the powers of the city's legislative and fiscal body, together with those of the county's legislative and fiscal body are consolidated and vested in a single city-county council.

As of January 2004, there are 19 second class cities. Lawrence is the newest. A second class city with a population that falls below 35,000, as determined in a subsequent census, retains its status as a second class city, unless the common council adopts third class city status (IC 36-4-1-1). (East Chicago, Marion, and Michigan City have populations of less than 35,000, but each has retained its status as a second class city). Fort Wayne is the largest second class city, with a population of over 207,000. The smallest second class city, Marion, has a population that exceeds 31,000.

As of January 2004, there are 97 third class cities. A third class city with a population that exceeds 35,000, as determined in a subsequent census, retains its status as a third class city, unless the common council adopts second class city status (IC 36-4-1-1.1). (Columbus, Carmel and Greenwood each have populations that exceed 35,000, but have not adopted second class city status). Lawrence adopted such an ordinance and assumed second class status on January 1, 2004. Columbus is the largest third class city, with a population that exceeds 39,000. Cannelton is the smallest city, with a population that exceeds 1,200.

Every city in the state has an elected mayor and, except for Indianapolis, an elected common council. Indianapolis has a 29-member city-county council. The General Assembly has also authorized the election of a city judge in all second and third class cities, although the decision as to whether a city will have a city court and a city judge is left to the discretion of the common council; some cities have them and others do not. See, IC 33-10.1-1-3. In addition to these elected officials, a city clerk is elected in second class cities, while a clerk-treasurer is elected in third class cities.

Second class cities have a nine-member common council, with six members elected from districts and three members elected at-large.

In third class cities, the common council generally has seven members, with either two or three members elected at-large; the remaining members are elected from districts. Cities with populations of less than 10,000 that acted prior to September 1, 1982, were permitted to continue electing a five-member common council with either one or two members elected at large; the remaining council members are elected from districts. Cities with populations of less than 7,000 that acted prior to May 7, 1991, were permitted to continue electing a five-member common council with four members elected from districts and one at-large member, although voters are permitted to vote for all five members.

While a city's classification determines the size of its common council and which officials the mayor is required to appoint (as discussed below), and has some impact on the administration of city operations, classification of cities has primarily been used by the General Assembly to make specific grants of authority to certain cities, as opposed to granting that authority to all cities in the state. The best-known example of this was contained in the 1969 "Unigov" legislation, which applied only to first class cities, and consolidated the governing structures of the City of Indianapolis and Marion County. A recent example of the use of the classification of cities is legislation enacted by the General Assembly in 2003 that permits first

and second class cities, under certain circumstances, to establish community revitalization enhancement districts (P.L. 224-2003, SECTION 236).

Towns

Unlike cities, towns are not classified on the basis of population. Fishers is the largest town, with a population (officially) of nearly 39,000. A town may adopt city status only if its population exceeds 2,000. The transition to city status is not automatic and must be accomplished through a referendum (IC 36-4-1-4).

A town has an elected clerk-treasurer and town council with anywhere from three to seven members. The number of council members is determined by local ordinance (IC 36-5-1-10.1 and IC 36-5-2-4.1). The president of the town council is the town's executive (IC 36-5-2-2), except for the Town of Vernon, which has a mayor under its original, and unique, charter.

The town council may opt to have members elected only from districts or to have a combination of council members elected from districts and members elected at-large. (IC 36-5-2-5). The town council may change the number of members of the town council, following a referendum on that question (IC 36-5-2-4.2). If the town has a population of less than 3,500, the town council may abolish the council districts and choose to have all members elected at large by all voters (IC 36-5-2-4.1(h)).

Unincorporated Communities

There are a number of communities that have never been incorporated and which, as a consequence, are neither cities nor towns. They, like the other unincorporated areas of the county in which they are located, are governed by the board of commissioners of the county. An unincorporated area that seeks to become a municipality may incorporate only as a town (IC 36-5-1-2 through 10.1). There is no method for incorporating directly into city status. However, a town with a population of more than 2,000 may seek city status, if the town council adopts a resolution placing the question before the town's voters and the question is voted upon at a general or special election. The affirmative vote of a majority of those voting is sufficient to allow a change from town to city status (IC 36-4-1-4).

CITY STATUS COMPARED TO TOWN STATUS

The conversion of a municipality from town to city status is more than a mere change in labels. The implementation of such a change should be carefully considered before this step is taken. An examination of the differences between cities and towns is helpful in making such a decision.

Structure

The major structural difference between city and town government is the existence of separate executive (mayor) and legislative (council) branches within city government. See also, IC 36-4-4. Although the town council president is legally the town executive, the general

statutes governing towns do not grant any specific executive authority to the town council president, and in most towns, the executive authority is collegially exercised by the town council. Some towns (especially large ones) have experienced problems because of the perceived absence of a chief executive with authority to represent the interests of the town in activities such as economic development and dealings with state and federal agencies, and to be present for daily administrative decisions that cannot wait for approval by the town council. In 1971, the legislature recognized this problem and enacted the Town Manager Law (IC 36-5-5) which allows a town council to hire a town manager and delegate to the manager duties similar to those that are imposed upon a mayor. As of August, 2003, there were approximately 70 town managers employed by towns in Indiana.

Powers

As will be discussed at greater length below, cities and towns are "Home Rule" entities under IC 36-1-3, with broad powers that generally may be exercised at the discretion of local elected officials unless there is a specific statute either establishing or permitting a particular method for the exercise of a power (IC 36-1-3-6), or denying a particular power (IC 36-1-3-8). In some instances, specific statutes are applicable only to cities or certain cities, but those statutes generally do not represent major additional powers.

Revenue

All sources of revenue for cities and towns, including federal aid, are based on a variety of factors such as need, population, assessed valuation, relative proportion of the total county levy or population, street mileage, etc. Most state and federal laws refer to "taxing unit," "civil taxing unit," "unit of government," or "political subdivision" when allocating or distributing monies. Neither the state nor the federal government allocates any revenue solely based on the status of a municipality as either a city or a town. Cities generally have no legally greater revenue-raising or grant-receiving capability than do towns.

Expenses

The cost of municipal administration is one of the most significant differences between the expense of operating city government as opposed to operating town government. The salaries of the mayor, department heads and other administrative employees are not expenses ordinarily incurred by towns, although larger towns have many of the same department heads and other administrative employees, and thus incur many of the same expenses. Many towns also have the salary of the appointed town manager to fund. Perhaps the most expensive difference between cities and towns is in the area of public safety pensions. Cities are mandated by state law to provide and pay for pensions for regular police and fire personnel. Towns that have chosen to establish a metropolitan police commission for administering law enforcement are also subject to the statutes governing police pensions. Towns are not subject, however, to the statutes requiring the funding of pensions for firefighters.