

ATTORNEY FOR PETITIONER:  
**ROBERT B. LUTZ**  
ATTORNEY AT LAW  
Speedway, IN

ATTORNEYS FOR RESPONDENT:  
**GREGORY F. ZOELLER**  
ATTORNEY GENERAL OF INDIANA  
**JONATHAN E. LAMB**  
**JOHN P. LOWREY**  
DEPUTY ATTORNEYS GENERAL  
Indianapolis, IN

---

**IN THE  
INDIANA TAX COURT**

---



THE SPEEDWAY PUBLIC LIBRARY, )  
 )  
Petitioner, )

v. )

INDIANA DEPARTMENT OF LOCAL )  
GOVERNMENT FINANCE, )

Respondent. )

Cause No. 49T10-1103-TA-22

---

ON APPEAL FROM A FINAL DETERMINATION OF  
THE DEPARTMENT OF LOCAL GOVERNMENT FINANCE

---

**FOR PUBLICATION  
June 24, 2014**

FISHER, Senior Judge

The Speedway Public Library has asked this Court to overturn the Indiana Department of Local Government Finance's (DLGF) final determination rejecting the appropriations and levies associated with its 2011 budget. Upon review, however, the Court affirms the DLGF's final determination.

**FACTS AND PROCEDURAL HISTORY**

In July of 2010, the Library formulated its estimated budget for 2011. (See Cert.

Admin. R. at 2-9.) On July 14, 2010, and then again on July 21, 2010, the Library published notice that on August 4, 2010, it would conduct a public hearing on that estimated budget and the associated tax rates. (See Cert. Admin. R. at 10, 189-94.) The notice also provided that the Library would then “adopt” its budget at a meeting scheduled for August 17, 2010. (See Cert. Admin. R. at 10, 189-94.) During the August 17<sup>th</sup> meeting, the Library issued resolutions that appropriated monies out of certain funds consistent with the terms of its estimated budget. (Compare Cert. Admin. R. at 2-6 with 11-13.) No member of the public, however, attended either the August 4<sup>th</sup> hearing or the August 17<sup>th</sup> meeting. (See Cert. Admin. R. at 85-86.)

The Library submitted its budget to the Speedway Town Council. On September 13, 2010, at a regularly scheduled meeting, the Town Council issued a resolution that “approve[d] and adopt[ed] the final Operating and Maintenance Budgets and Tax Levies of the [Library] as submitted.” (Cert. Admin. R. at 19.) The Library’s budget was then forwarded to the DLGF.

In January of 2011, the DLGF issued a 1782 Notice stating that it could not approve the Library’s 2011 budget because no notice complying with Indiana Code § 6-1.1-17-3 had been provided to the public regarding the Town Council’s September 13<sup>th</sup> adoption meeting. (See Cert. Admin. R. at 77, 81-84, 185-88.) As a result, the DLGF reinstated the appropriations and levies associated with the Library’s 2010 budget. (See Cert. Admin. R. at 77, 81.)

The Library subsequently requested the DLGF to set aside its determination, but the DLGF rejected the request. (Cert. Admin. R. at 81-87, 188.) On March 17, 2011, the Library initiated this original tax appeal. The Court conducted oral argument on

February 13, 2012. Additional facts will be supplied when necessary.

### **STANDARD OF REVIEW**

The Library, in challenging the propriety of the DLGF's final determination, bears the burden of demonstrating its invalidity. See Brown v. Dep't Local Gov't Fin., 989 N.E.2d 386, 388 (Ind. Tax Ct. 2013). Thus, it must demonstrate to the Court that the DLGF's final determination is arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence, or in contravention of the law. See id.

### **LAW**

In 1969, the Legislature consolidated the governmental functions of Marion County and the first class city of Indianapolis through legislation commonly known as "Unigov." See Dortch v. Lugar, 266 N.E.2d 25, 30 (Ind. 1971), abrogated on other grounds by Collins v. Day, 644 N.E.2d 72 (Ind. 1994). Unigov eliminated the overlapping jurisdictions of various county and municipal boards and centralized governmental control over the entire metropolitan area in a single legislative/fiscal body, the City-County Council of Indianapolis and Marion County. See id. See also IND. CODE §§ 36-1-2-6(2), -9(3); 36-3-4-2 (2014).

Although the Town of Speedway is physically located within Unigov's territorial boundaries, it is excluded from Unigov's jurisdiction pursuant to Indiana Code § 36-3-1-7. (See Pet'r Br. at 2.) Consequently, the Library's budget packages are not submitted to the City-County Council of Indianapolis and Marion County for approval; instead, they are submitted to the Town Council for approval. See IND. CODE §§ 36-3-6-9(a), (d); 36-1-2-6(4) (2010). See also IND. CODE § 6-1.1-17-20(a)-(c)(1) (2010). Upon receipt, the Town Council is required "[t]o review [the Library's] budget and proposed tax levy and

adopt a final budget and tax levy[.]” See I.C. § 6-1.1-17-20(e).<sup>1</sup> In doing so, the Town Council can “reduce or modify but not increase the [Library’s] proposed budget or tax levy.” See I.C. § 6-1.1-17-20(e).

## ANALYSIS

The Library admits that no notice was provided to the public pursuant to Indiana Code § 6-1.1-17-3 with respect to the Town Council’s September 13<sup>th</sup> meeting. (See Pet’r Br. at 4.) On appeal, however, the Library presents the Court with two arguments to support its claim that the DLGF erroneously determined that such notice was required.

### I.

The Library first argues that the DLGF erroneously determined that notice of the Town Council’s September 13<sup>th</sup> meeting was required because under Indiana Code § 6-1.1-17-20(e), the Town Council did not adopt the Library’s budget, it merely reviewed it. (See Pet’r Br. at 14 (asserting that the Library adopted its own budget on August 17<sup>th</sup>), 15 (implying that the Town Council is not an adopting entity because it does not have the authority to increase the Library’s budget); Pet’r Reply Br. at 2 (asserting that the Town Council becomes an adopting entity only if it modifies the Library’s originally adopted budget).) To support its argument, the Library points to the fact that before it submitted its budget to the Town Council, it filed its budget with the Speedway Town Clerk pursuant to Indiana Code § 36-3-6-9(b). (See Pet’r Br. at 3, 14-15; Pet’r Reply Br. at 1-2.) That statutory provision states that “[t]he board of each entity listed in subsection (a) shall, after adoption of its proposed budget and tax levies, submit them,

---

<sup>1</sup> The Library has admitted that it was subject to the provisions of Indiana Code § 6-1.1-17-20. (Compare Pet’r Br. at 12-13 with IND. CODE § 6-1.1-17-20(a)-(c)(1) (2010).)

along with detailed accounts, to the city clerk before the first day of September of each year.” I.C. § 36-3-6-9(b) (emphasis added). The Library maintains that if some other entity actually adopted its budget, there would have been no reason for the legislature to use the words “after adoption” in Indiana Code § 36-3-6-9(b). (See Pet’r Br. at 15; Pet’r Reply Br. at 2.) The Library’s argument fails for three interrelated reasons.

First, to the extent the Library filed its budget with the Speedway Town Clerk pursuant to Indiana Code § 36-3-6-9(b),<sup>2</sup> that statutory provision did not apply. As previously stated, Indiana Code § 36-3-6-9(b) provided that “[t]he board of each entity listed in subsection (a) shall, after adoption of its proposed budget and tax levies, submit them, along with detailed accounts, to the city clerk before the first day of September of each year.” I.C. 36-3-6-9(b) (emphasis added). Subsection (b) must therefore be read in relation to subsection (a). See State v. Adams, 583 N.E.2d 799, 800 (Ind. Ct. App. 1992) (explaining that a statute must be read as a whole, and not sections or parts of it piecemeal), trans. denied. Indiana Code § 36-3-6-9(a), in relevant part, states:

Except as provided in subsection (d), the city-county legislative body shall review the proposed operating and maintenance budgets and tax levies and adopt final operating and maintenance budgets and tax levies for each of the following entities in the county:

- (1) An airport authority operating under IC 8-22-3.
- (2) A public library operating under IC 36-12.
- (3) A capital improvement board of managers operating under 36-10.
- (4) A public transportation corporation operating under IC 36-9-4.
- (5) A health and hospital corporation established under IC 16-22-8.
- (6) Any other taxing unit (as defined in IC 6-1.1-1-21) that is

---

<sup>2</sup> While the DLGF disputes this fact, (see Resp’t Br. at 2 n.4), it does not affect the opinion’s outcome.

located in the county and has a governing body that is not comprised of a majority of officials who are elected to serve on the governing body.

I.C. § 36-3-6-9(a) (emphasis added). See also I.C. § 36-3-6-9(d) (explaining that because the Library is outside Unigov's jurisdiction, it would not submit its proposed budget to the city-county legislative body referenced in subsection (a).) Given this language, it is clear that Indiana Code § 36-3-6-9(b) did not apply to the Library; instead, it applied to the public library that has its budget and tax rates approved by the City-County Council of Indianapolis and Marion County (i.e., the Indianapolis-Marion County Public Library). See supra at p. 3.

Second, Indiana Code § 6-1.1-17-20(e) unambiguously instructed the Town Council to review the Library's proposed budget and adopt a final budget, not review or adopt. See I.C. § 6-1.1-17-20(e). Thus, while the Town Council may have simply approved or accepted the Library's budget and tax levy "as submitted," that act constituted more than just a "review" of the Library's budget. It constituted the Town Council's adoption of a final budget for the Library. See, e.g., Indiana Dep't of State Revenue v. Horizon Bancorp, 644 N.E.2d 870, 872 (Ind. 1994) (explaining that the plain and obvious meaning of an unambiguous statute may not be enlarged or restricted). See also WEBSTER'S THIRD NEW INT'L DICTIONARY 29 (2002 ed.) (defining "adopt" as "to accept formally"; "to take over . . . esp. with little or no change in form"; "to endorse and assume official responsibility for").

The final reason the Library's argument fails is because when the Town Council received the Library's proposed budget and tax rates, it was required to conduct a hearing thereon. See I.C. § 6-1.1-17-20(c) (indicating that the Library was required to

submit its proposed budget and tax levies to the Town Council at least 30 days before it held a budget approval hearing thereon). In turn, notice of that hearing was statutorily required. See IND. CODE § 6-1.1-17-3(a) (2010).

II.

Alternatively, the Library argues that no notice of the Town Council's September 13<sup>th</sup> meeting should be required because the Library had already complied with and satisfied the notice requirements. More specifically, the Library explains that:

The whole purpose of the publication process is to give citizens notice of what is going on in their communities, let them know when and where they can then go an[d] be heard in their opinions. These goals were met by the publications [on] July 14 and 21, 2010. The citizens of the taxing unit were advised of the date, time, place and purpose of the public budget hearing being held on August 4, and August 17, 2010 to consider the [Library's] budget. . . . So if the concern is that the public did not have an opportunity to comment on and/or object to the budget, tax rates and levies[,] that concern is alleviated.

(Pet'r Br. at 15-16.) Moreover, the Library explains that the Town Council's September 13<sup>th</sup> meeting was a regularly scheduled meeting with a posted agenda. (Pet'r Br. at 15.) This argument, however, is no more availing than the Library's first one.

As just explained, the Town Council was required to provide the public with notice of its September 13<sup>th</sup> meeting. Thus, the fact that the Library provided notice of its August 4<sup>th</sup> hearing and its August 17<sup>th</sup> meeting misses the point. See Town of Beverly Shores Plan Comm'n v. Enright, 463 N.E.2d 246, 248 (Ind. 1984) (explaining that notice statutes "are generally strictly construed and notice in accordance with their provisions held to be mandatory"). See also generally IND. CODE § 6-1.1-17 (demonstrating that because taxpayers have multiple opportunities to object and be heard on a political subdivision's proposed budget, notice will also occur on multiple

occasions). Furthermore, the record evidence does not show that notice was provided for the Town Council's September 13<sup>th</sup> adoption meeting nor does it show that the agenda for that meeting was posted. (See generally Cert. Admin. R.)

### **CONCLUSION**

For the foregoing reasons, the Library has not demonstrated that the DLGF's final determination in this matter is arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence, or in contravention of the law. Consequently, the DLGF's final determination is AFFIRMED.