

IC 36-5-1.1

Chapter 1.1. Dissolution of Small Towns

IC 36-5-1.1-1

Application of chapter

Sec. 1. This chapter applies to:

- (1) towns having a population of less than five hundred (500);
and
- (2) included towns (as defined in IC 36-3-1-7).

As added by P.L.342-1987, SEC.2. Amended by P.L.5-1989, SEC.109.

IC 36-5-1.1-2

Institution of proceedings

Sec. 2. (a) Proceedings to dissolve a town may be instituted under section 10.5 or 10.6 of this chapter or by filing with the executive of the county containing more than fifty percent (50%) in assessed valuation of the land in the town:

- (1) a resolution adopted by the town legislative body requesting dissolution; or
- (2) a petition signed by at least twenty-five percent (25%) of the town's voters registered at the last general election.

(b) On receipt of a petition or resolution for dissolution, the county executive shall mark the petition or resolution with the date of filing.

As added by P.L.342-1987, SEC.2. Amended by P.L.5-1989, SEC.110; P.L.4-1991, SEC.143.

IC 36-5-1.1-3

Public hearing; notice

Sec. 3. The county executive shall hold a public hearing on a petition or resolution for dissolution filed under section 2 of this chapter not less than sixty (60) nor more than ninety (90) days after the date of the filing of the petition or resolution. The county executive shall publish notice of the hearing in accordance with IC 5-3-1.

As added by P.L.342-1987, SEC.2.

IC 36-5-1.1-4

Recommendations of plan commission

Sec. 4. (a) The county executive shall forward one (1) copy of the resolution or petition filed under section 2 of this chapter to the plan commission, if any, having jurisdiction.

(b) The plan commission shall submit their written recommendations for approval or disapproval of dissolution to the county executive at least ten (10) days before the hearing required by section 3 of this chapter.

As added by P.L.342-1987, SEC.2. Amended by P.L.24-1995, SEC.26.

IC 36-5-1.1-5

Parties; remonstrance against dissolution; dismissal of petition

Sec. 5. The recipients of the notice required by section 3 of this chapter are parties to and are entitled to be heard at the public hearing. The petition for dissolution shall be dismissed if at any time during the dissolution proceedings, including an appeal, the county executive or a court hearing an appeal is presented with a verified remonstrance against dissolution, signed by at least twenty-five percent (25%) of the town's voters registered at the last general election. The executive or court may determine the validity of the remonstrance by submitting it to the clerk of the circuit court for the county where the voter resides for verification.

As added by P.L.342-1987, SEC.2.

IC 36-5-1.1-6

Decision of county executive

Sec. 6. The county executive shall, on the date fixed under section 3 of this chapter, hear and determine the petition or resolution and render a decision on the question of dissolution.

As added by P.L.342-1987, SEC.2.

IC 36-5-1.1-7

Evidentiary considerations

Sec. 7. At the hearing the county executive shall approve dissolution unless the evidence establishes that:

- (1) the petition requesting dissolution has not been signed by at least twenty-five percent (25%) of the voters;
- (2) there are enough invalid signatures on the petition requesting dissolution to reduce the number of valid signatures to below twenty-five percent (25%) of the voters;
- (3) at least twenty-five percent (25%) of the town's voters have signed a petition under section 5 of this chapter remonstrating against the dissolution; or
- (4) the town legislative body has passed a resolution opposing dissolution.

As added by P.L.342-1987, SEC.2.

IC 36-5-1.1-8

Residents' challenge to sufficiency or validity of petition

Sec. 8. The county executive shall permit the residents of the town to submit evidence challenging the sufficiency or the validity of either:

- (1) a petition or resolution for dissolution; or
- (2) a petition opposed to dissolution.

As added by P.L.342-1987, SEC.2.

IC 36-5-1.1-9

Appeal; notice; bond; transcript; change of venue; effective date of dissolution

Sec. 9. (a) A person aggrieved by a decision made by the county

executive under section 6 of this chapter may, within thirty (30) days, appeal that decision or result to the circuit court for the county containing more than fifty percent (50%) in assessed valuation of the land in the town. The appeal is instituted by giving written notice to the clerk of the circuit court and filing with the county executive a bond for five hundred dollars (\$500), with surety approved by the county executive. The bond must provide:

- (1) that the appeal will be duly prosecuted; and
- (2) that the appellants will pay all costs if the appeal is decided against them.

(b) When an appeal is instituted, the county executive shall file with the clerk of the circuit court a transcript of all proceedings in the case, together with all papers filed in the case. The county executive may not take further action in the case until the appeal is heard and determined.

(c) An appeal under this section shall be heard by the circuit court without a jury. Change of venue from the judge may be granted, but change of venue from the county may not be granted. If the court orders the dissolution to take place, the circuit court clerk shall, immediately after the judgment of the court, certify the judgment of the circuit court to:

- (1) the clerk of the municipality;
- (2) the circuit court clerk of any other county in which the town is located; and
- (3) the office of the secretary of state.

(d) Except as provided in subsection (e), the dissolution takes effect sixty (60) days after the order is certified.

(e) A dissolution under this section may not take effect during the year preceding a year in which a federal decennial census is conducted. A dissolution under this section that would otherwise take effect during the year preceding the year in which the federal decennial census is conducted takes effect January 1 of the year in which a federal decennial census is conducted.

(f) Notwithstanding subsection (e) as that subsection existed on December 31, 2009, a dissolution that took effect January 2, 2010, because of the application of subsection (e), as that subsection existed on December 31, 2009, is instead considered to take effect January 1, 2010, without any additional action being required.

As added by P.L.342-1987, SEC.2. Amended by P.L.5-1989, SEC.111; P.L.3-1997, SEC.459; P.L.123-2000, SEC.7; P.L.113-2010, SEC.125.

IC 36-5-1.1-10

Dissolution ordinance; effective date; disposition of property; validity of contracts; records

Sec. 10. (a) If the county executive approves dissolution under section 6 of this chapter, the county executive shall adopt:

- (1) an ordinance; or
- (2) an order in a county having a consolidated city; dissolving the town.

(b) Except as provided in subsection (e), a dissolution takes effect:

(1) at least sixty (60) days after the ordinance or order under subsection (a) is adopted; and

(2) when the county auditor files a copy of the ordinance or order with:

(A) the circuit court clerk of each county in which the town is located; and

(B) the office of the secretary of state.

(c) The property owned by the town after payment of debts and liabilities shall be disposed of by the county executive. Any proceeds remaining shall be deposited in the county general fund. Dissolution of a town does not affect the validity of a contract to which the town is a party.

(d) After dissolution, the books and records of the town become the property of the county executive for safekeeping.

(e) A dissolution under this section may not take effect during the year preceding a year in which a federal decennial census is conducted. A dissolution under this section that would otherwise take effect during the year preceding a year in which a federal decennial census is conducted takes effect January 1 of the year in which a federal decennial census is conducted.

(f) Notwithstanding subsection (e) as that subsection existed on December 31, 2009, a dissolution that took effect January 2, 2010, because of the application of subsection (e), as that subsection existed on December 31, 2009, is instead considered to take effect January 1, 2010, without any additional action being required.

As added by P.L.342-1987, SEC.2. Amended by P.L.5-1989, SEC.112; P.L.10-1992, SEC.29; P.L.3-1997, SEC.460; P.L.123-2000, SEC.8; P.L.113-2010, SEC.126.

IC 36-5-1.1-10.5

Dissolution of town; requisites of resolution; notice; hearing; adoption of ordinance; effective date of dissolution; validity of town contracts

Sec. 10.5. (a) This section applies to the dissolution of an included town.

(b) The town legislative body may adopt a resolution to consider dissolution of the town under this section. The resolution must state the following:

(1) That the town legislative body conduct a public hearing at a stated date, place, and time concerning the dissolution of the town.

(2) That the town legislative body will hear all statements presented in favor of or in opposition to dissolution.

(3) That the town legislative body may adopt an ordinance to dissolve the town at the conclusion of the public hearing.

(c) The town clerk shall publish a notice of the public hearing in accordance with IC 5-3-1.

(d) The town legislative body may continue a public hearing

under this section. If a hearing is continued, the clerk is not required to publish an additional notice under subsection (c).

(e) The town legislative body may adopt an ordinance following the conclusion of the public hearing under subsection (b). The town clerk shall file a copy of the ordinance with:

- (1) the circuit court clerk of the county; and
- (2) the office of the secretary of state.

(f) Except as provided in subsection (g), the ordinance dissolving the town takes effect:

- (1) at least sixty (60) days after adoption; and
- (2) when the ordinance is filed under subsection (e).

(g) A dissolution under this section may not take effect during the year preceding a year in which a federal decennial census is conducted. A dissolution under this section that would otherwise take effect during the year preceding a year in which the federal decennial census is conducted takes effect January 1 of the year in which a federal decennial census is conducted.

(h) When an ordinance dissolving a town becomes effective:

- (1) the territory included within the town when the ordinance was adopted becomes a part of the consolidated city;
- (2) the books and records of the town become the property of the county executive;
- (3) the property owned by the town after payment of debts and liabilities shall be disposed of by the county executive; and
- (4) the county executive shall deposit any proceeds remaining after payment of debts and liabilities into the county general fund.

(i) The dissolution of a town under this section does not affect the validity of a contract to which the town is a party.

(j) Notwithstanding subsection (g) as that subsection existed on December 31, 2009, a dissolution that took effect January 2, 2010, because of the application of subsection (g), as that subsection existed on December 31, 2009, is instead considered to take effect January 1, 2010, without any additional action being required.

As added by P.L.5-1989, SEC.113. Amended by P.L.3-1997, SEC.461; P.L.123-2000, SEC.9; P.L.113-2010, SEC.127.

IC 36-5-1.1-10.6

Included towns; petition; ballot question; filing certification; time of dissolution; year preceding census year; results of dissolution; contracts

Sec. 10.6. (a) This section applies to included towns.

(b) The dissolution of a town under this section may be instituted by filing a petition with the county board of registration. The petition must be signed by at least the number of the registered voters of the town required to place a candidate on the ballot under IC 3-8-6-3. The petition must be filed not later than June 1 of a year in which a general or municipal election will be held.

(c) If a petition meets the criteria set forth in subsection (b), the county board of registration shall certify the public question to the

county election board under IC 3-10-9-3. The county election board shall place the question of dissolution on the ballot provided for voters in the included town at the first general or municipal election following certification. The question shall be placed on the ballot in the form prescribed by IC 3-10-9-4 and must state "Shall the town of _____ dissolve?".

(d) If the public question is approved by a majority of the voters voting on the question, the county election board shall file a copy of the certification prepared under IC 3-12-4-9 concerning the public question described by this section with the following:

- (1) The circuit court clerk of the county.
- (2) The office of the secretary of state.

(e) Except as provided in subsection (f), dissolution occurs:

- (1) at least sixty (60) days after certification under IC 3-12-4-9; and
- (2) when the certification is filed under subsection (d).

(f) A dissolution under this section may not take effect during the year preceding a year in which a federal decennial census is conducted. A dissolution under this section that would otherwise take effect during the year preceding a year in which the federal decennial census is conducted takes effect January 1 of the year in which a federal decennial census is conducted.

(g) When a town is dissolved under this section:

- (1) the territory included within the town when the ordinance was adopted becomes a part of the consolidated city;
- (2) the books and records of the town become the property of the county executive;
- (3) the property owned by the town after payment of debts and liabilities shall be disposed of by the county executive; and
- (4) the county executive shall deposit any proceeds remaining after payment of debts and liabilities into the county general fund.

(h) The dissolution of a town under this section does not affect the validity of a contract to which the town is a party.

(i) Notwithstanding subsection (f) as that subsection existed on December 31, 2009, a dissolution that took effect January 2, 2010, because of the application of subsection (f), as that subsection existed on December 31, 2009, is instead considered to take effect January 1, 2010, without any additional action being required.

As added by P.L.4-1991, SEC.144. Amended by P.L.3-1993, SEC.270; P.L.12-1995, SEC.130; P.L.3-1997, SEC.462; P.L.123-2000, SEC.10; P.L.113-2010, SEC.128.

IC 36-5-1.1-11

Limitation

Sec. 11. If a dissolution proceeding under this chapter is unsuccessful, the person seeking dissolution may not attempt a new proceeding under this chapter or IC 36-5-1 for at least one (1) year following the hearing under section 3 or 10.5 of this chapter or the election under section 10.6 of this chapter.

As added by P.L.342-1987, SEC.2. Amended by P.L.5-1989, SEC.114; P.L.4-1991, SEC.145.

IC 36-5-1.1-12

Towns not functioning for ten years; hearing; findings; adoption of ordinance or ordering dissolution

Sec. 12. (a) This section does not apply to a town described by IC 36-5-1-11.5.

(b) A town subject to this chapter may be dissolved if the county election board of the county in which the greatest percentage of population of the town is located conducts a public hearing and finds that the town has not elected town officers or had a functioning town government during the preceding ten (10) years.

(c) The county election board shall certify the board's findings to the county executive, who may adopt an ordinance or (in a county having a consolidated city or subject to IC 36-2-3.5) issue an order to dissolve the town.

As added by P.L.3-1993, SEC.271.