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Court clarifies board authority

Case involves leadership of local political entity.

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A recent Indiana Court of Appeals decision steps into the middle of a power struggle in Hamilton County and clearly delineates the boundaries of power for a local governing body.

The opinion in *Clay Township of Hamilton County Indiana v. Clay Township Regional Waste District* was handed down Dec. 8. Judge Terry Crone authored the opinion, in which he was joined by Judges Edward Najam and Michael Barnes.

The CTRWD was created in 1975 at the request of the Clay Township trustee. The district's purpose was to provide for collection, treatment, and disposal of sewage within the bounds of the district. The predecessor agency to the Indiana Department of Environmental Management granted the request and created the district along with a seven-member board to oversee its operations.

In the early 1990s, the district expanded its operations into southeastern Boone County, and at that time requested its organizational structure be modified to allow for additional members representing Boone County customers.

The board structure remained the same until a proposal was initiated to merge the Clay Township operations with the city of Carmel's operations. Board president Henry Blackwell opposed the merger, and on Dec. 20, 2004, the Clay Township trustee informed Blackwell that she would not re-appoint him because of his opposition. At the board's Dec. 27 meeting, the board adopted a resolution that re-allocated three of the five appointments available to the trustee. One went to the Hamilton County Commissioners, one to the Boone County Council, and one to the town of Zionsville.

Three days later, the township filed a complaint against the district seeking an injunction preventing the CTRWD board from enforcing its resolution.

Plaintiffs argued that the resolution would

reduce the township appointing authority to 22 percent of the members of the board, when 92 percent of the ratepayers reside in Clay Township.

On Feb. 4, the trial court issued an order denying injunctive relief, stating that the "Resolution for the reallocation of the Board arguably could have been done to protect, preserve, the works and improvements and properties owned and controlled by the District."

The court noted in its order that the resolution recognized the various areas being served by the waste district – no longer only Clay Township and Carmel but also Boone County and Zionsville. It concluded under Ind. Code Sections 13-26-5-3 and -4 that the board had the authority to take the action it did.

However, the appellate court disagreed and reversed the trial court's decision, finding that the board's action in reapportioning its own membership was improper under state law.

"We conclude that the trial court's interpretation of Indiana Code Sections 13-26-5-3 and -4 sweeps too broadly and produces the absurd result of allowing district boards to reallocate

appointments whenever they perceive a threat to their turf or tenure," Crone wrote. "There is no statute that specifically permits a district board to do so, and we find no implied power to do so ..."

Earlier in the decision, the court agreed that there could legitimately be differences of opinion regarding the proposed merger, but that the board's actions were nonetheless unwarranted and contrary to Indiana law.

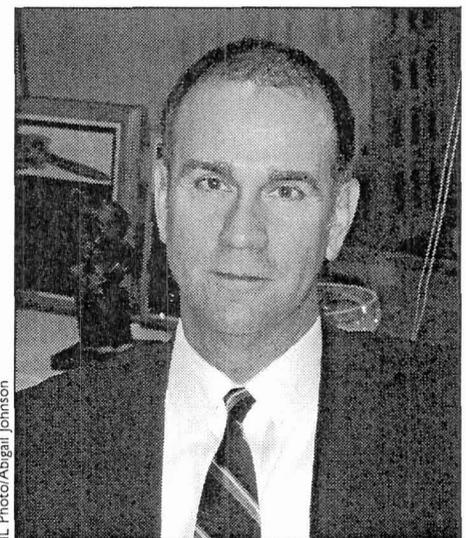
"Reasonable minds may differ as to the wisdom of a particular merger, but we conclude that the relevant statutes do not permit a district's board to reshuffle itself to avoid (or facilitate) one," Crone wrote.

David Wright, a partner with Kroger Gardis & Regas and attorney for the township, said the Court of Appeals rightly focused not on the proposed merger with Carmel's operations but on the board's specific action.

"It did not have the authority to indepen-

"It did not have the authority to independently re-allocate itself."

attorney David Wright



David Wright, a partner with Kroger Gardis & Regas, represented Clay Township in a dispute over leadership of the Clay Township Regional Waste District.

dently re-allocate itself," Wright said.

As the time to petition for transfer on the issue has now passed, Wright said this particular action is no longer a consideration. However, on Dec. 12 – four days after the appellate decision was handed down – Wright said the board passed another resolution petitioning IDEM to either grant a re-apportioning of the appointments or expand the number of members on the board. IDEM did grant that the number of members be expanded to 13, and Clay Township has since filed suit in Hamilton County courts alleging that the resolution was passed in violation of Indiana's open door laws.

In addition, Wright said Clay Township is challenging IDEM's decision procedurally through the agency.

"It's neither equitable nor appropriate for the appointing authority of this trustee to be reduced to a minority when the constituency makes up 92 percent of the ratepayers," Wright said.

Wright said Indiana has an increasing number of political districts like the Clay Township waste district. In areas where there's rapid residential growth and abutting territories, it's only natural that conflicts such as this one will arise.

Attorneys for the waste district did not return calls seeking comment prior to *Indiana Lawyer* deadline. •