

OPINION 35

OFFICIAL OPINION NO. 35

December 23, 1975

Honorable Clifford D. Arnold
Indiana State Representative
203 Finch Trail, TC
Michigan City, Indiana 46360

Honorable John Coldren
Indiana State Representative
520 East High Street
Portland, Indiana 47371

Honorable Robert L. Kovach
Indiana State Senator
1133 East Third Street
Mishawaka, Indiana 46544

Gentlemen:

This is in response to your related requests for opinions concerning the application of the Public Employee Labor Relations Act (Acts 1975, Public Law 254), specifically, (1) are deputies and employees of a county auditor "confidential employees" within the meaning of Indiana Code of 1971, section 22-6-4-1 and thus excluded from the Act; (2) are county health department employees "county health care institutions employees" under Code section 22-6-4-1 and thus excluded from the Act; and (3) who is the proper person or persons to represent county government in its negotiations with employee organizations.

ANALYSIS

Recognizing the special relationship between public employers and public employees, the 1975 General Assembly enacted the Public Employee Labor Relations Act, which adds sections 22-6-4-1 to 22-6-4-13 to the Indiana Code of 1971. The Act grants to public employees the right to organize freely and choose their representatives, requires public employers to negotiate and bargain in good faith with employee organizations and to enter into written agreements evidenc-

ing the result of such bargaining, and establishes procedures employers and employees may follow where collective bargaining breaks down or where unfair labor practices occur.

Code section 22-6-4-1(c) provides that "employee," as used in the Act, means the following:

" . . . any employee of an employer, and shall not be limited to the employees of a particular employer and shall include any employee of an employer, whether or not in the the classified service of the employer, except officials appointed or elected pursuant to a statute to a policy-making position, and shall include any individual whose work has ceased as a consequence of, or in connection with, any unfair labor practice or concerted employee action. 'Employee' does not mean policemen, firemen, professional engineers, faculty member of any university or certificated employees of school corporations or confidential employees or municipal or county health care institution employees."

Plainly, "confidential employees" and "county health care institution employees" are not employees within the definition of the Act. The first two questions presented here thus ask whether the rights extended to employees by the Act are extended to the deputies and employees of a county auditor and county health department employees.

At the outset, it should be noted that a deputy county auditor appointed to a policy-making position is excluded from the Act under a separate provision of Code section 22-6-4-1(c). The "confidential employee" provision, however, can extend to non-policy-making employees who meet the statutory definition. The definition of "confidential employee," as used in Code section 22-6-4-1(c), is found at Code section 22-6-4-1(o) to be the following:

" . . . an employee whose unrestricted access to confidential personnel files or whose functional responsibilities or knowledge in connection with the issues involved in dealings between the employer and its employees would make his membership in an employee organization incompatible with his official duties."

OPINION 35

It thus appears that the General Assembly intended to exclude from the operation of the Act employees whose intimate work with and knowledge of the personnel records, needs, and policies of the governmental agency would place him in a conflict-of-interest situation. It may well be that a deputy county auditor or an employee of a county auditor does just this kind of personnel work and thus would be excluded from the Act. However, it does not follow that an employee of a county auditor is a confidential employee simply by virtue of his or her title. In less-populated counties where the auditor does not have a large number of employees, it may be that the auditor himself is the person who performs these functions.

With respect to the second question concerning county health department employees, the Act itself gives no specific, additional indication as to whether Code section 22-6-4-1(c) should be read so as to exclude such employees. Because of the general intent, however, to include all public employees unless they are specifically excluded, county health department employees should not be considered as institution employees and should be accorded the rights granted by the Act. That the function and organization of county health departments and county health care institutions are easily distinguishable is evident from comparing their respective authorizing statutes. Cf. Code sections 16-1-4-1 *et seq.* and 16-12.1-1-1 *et seq.*

The final question presented is who, under the Act, is the proper person or persons to represent county government in its negotiations with employee organizations.

Code section 22-6-4-1(b) provides the following:

“ ‘Employer’ means the state of Indiana or any political subdivision of the state, including without limitation, any town, city, county, public institution of higher education or vocational education, social service or welfare agency, public and quasi-public corporation, housing authority or other authority or public agency established by law, and any person or persons

designated by the employer to act in its interest in dealing with the employees.”

Plainly the county is an employer which may designate any person or persons “to act in its interest in dealing with the employees.” Your question, of course, is who has the ultimate authority to speak on behalf of the county and to designate the negotiators contemplated by this subsection. Code section 22-6-4-1(k), in defining what it means to “bargain collectively,” lists those matters which may be the subjects of negotiation (wages, hours and other terms and conditions of employment) and provides that the governmental unit should act “through its chief executive officer or his designee.” County government, however, has no “chief executive”; its executive authority is fragmented. The chain of command in county government does not lead ultimately to a single executive but leads rather to several independent officers, such as, auditor, coroner, assessor, and commissioners, each of whom has ultimate responsibility for the hiring, promotion, suspension, and termination of his employees. Consequently, it is difficult to identify one executive office, board, or agency which properly could represent the county in negotiating as to “wages, hours and other terms and conditions of employment.”

Although the Board of County Commissioners is directly responsible only for the hiring of its own staff and county highway department employees, it does provide certain services for all county government officers. Code section 17-1-14-11 authorizes the commissioners, *inter alia*, to supervise the use and disposition of county property and allow all claims against the county. Furthermore, it is the commissioners who are authorized, by Code section 17-1-24-18.3, to make recommendations to the county council as to what salaries should be fixed for *all* county employees.

The bargaining process requires that the county be represented by one official or board; an employee organization hardly can negotiate with two employer representatives. The board of county commissioners, for the reasons suggested, appears to be the executive body best suited to represent

OPINION 35

county government in its collective bargaining. Of course, it should be remembered that it is the county council which actually fixes salaries and that, pursuant to Code section 22-6-4-13, it is unlawful for any employer to enter into an agreement that would place that employer in a position of deficit financing.

CONCLUSION

It is, therefore, my Official Opinion that (1) employees of a county auditor are not "confidential employees" within the meaning of the Public Employee Labor Relations Act simply by virtue of their title. However, if the duties of such an employee include the kind of personnel work noted in the Act, he or she is a "confidential employee." A deputy county auditor appointed to a policy-making position is excluded from the Act, without respect to the "confidential employee" provision, because of his policy-making position.

It is further my Official Opinion that (2) county health department employees are covered by the Act; they are not "health care institution employees" within the meaning of Code section 22-6-4-1(c).

It finally is my Official Opinion that (3) the board of county commissioners is the proper body to represent county government in its negotiations with employee organizations within the limitations set by the Act and within the fiscal limitations set by the county council. There can be no deficit financing.