

**To: Dean Christy Ochoa & Executive Associate Dean Donna Nagy**

**From: Jody Madeira**

**Date: November 29, 2024**

**Re: IU's Conflict of Commitment Policy and Local Elected Office**

I've uncovered other relevant information that I hope is very useful to understanding this apparent conundrum between IU's conflict of commitment policy and other relevant details.

In summary, it appears that the concept of FTE for elected local government officials (both city and county) is misleading or unhelpful for several reasons: a) local officials cannot be required to work a set number of hours and are not compensated for hours worked; b) Monroe County's assignment of an FTE to the commissioner position appears to be related to a reclassification based on a salary increase (and it was unforeseen that listing an FTE, would have this unintended consequence); and c) the Indiana Supreme Court is preparing to issue an opinion that will address a number of relevant issues concerning local elected officials.

**1. By statute, County Commissioners are not required to report hours worked, and their salaries are not connected to hours worked.**

IN § 36-2-5-13(b) states that "an elected county officer is not required to report hours worked and may not be compensated based on the number of hours worked." This would suggest that the concept of FTE may be unenforceable and thus unhelpful in this context. This is likely why Monroe County and the City of Bloomington have not historically assigned an FTE to elected officials such as county commissioners, county council members, and city council members.

This is also why my opponent, Joe VanDeventer, would have been permitted to serve as Commissioner while also employed full-time as Director of Street Operations for the City of Bloomington and as the Assistant Public Works Director.

**2. Monroe County did not list an FTE for County Commissioners before 2023.**

It appears that the Monroe County government first assigned an FTE to local elected officials, including county commissioner, in 2023 when it increased the commissioner's salary and altered how elected officials' salaries were depicted in the annual salary ordinance. In 2021, the three Monroe County Commissioners advocated for a higher

salary that was commensurate with their peers in other counties and more aligned with their status as the executive and legislative heads of the county. Their salaries in 2021 were quite low – approximately \$34,000 at that time. The County Council approved a \$10,000 raise in 2021 (to begin in 2022), and a larger raise in 2022 (to begin in 2023).

Before 2023, the commissioners' status is listed as "elected" or "elected official" in the Elected Official Salary Compensation Grid in each year's salary ordinance, and no FTE is given (see Figures). I've been told that was because of IN § 36-2-5-13(b). Of note, an FTE was only assigned after commissioners' salary was increased in 2023.

To show the suddenness of the 2023 change, I've included the Elected Official Salary Compensation Grids for 2017 through 2023. The Commissioners are consistently listed under the "elected" status, in contrast to unelected employees who are given other designations such as "EXE."

*Figure 1: 2017 Elected Official Salary Grid - No FTE*

*Figure 2: 2018 Elected Official Salary Grid - No FTE*

*Figure 3: 2019 Elected Official Salary Grid - No FTE*

*Figure 4: 2020 Elected Official Salary Grid - No FTE*

*Figure 5: 2021 Elected Salary Compensation Grid - No FTE*

*Figure 6: 2022 Elected Official Salary Compensation Grid - no FTE*

*Figure 7: 2023 Elected Official Salary Compensation Grid - FTE listed*

### **3. Because of a pending Indiana court case, it is currently an open issue whether local elected officials can even be assigned a status as "full time" or "part time."**

There is a relevant case currently pending before the Indiana Supreme Court, which heard oral arguments on October 31, 2024 – *Perry County v. Huck* (No. 24A-PL-418). The plaintiff, Keith Huck, was an elected member of the Perry County Common Council who lost health insurance coverage in June 2023 after the Perry County Commissioners voted to discontinue health insurance coverage to "part-time" employees. Huck had stated that he worked approximately nine hours each month. Huck filed for a preliminary

injunction to force the commissioners to continue his health coverage, arguing that as an elected county official he was necessarily a full-time employee regardless of the actual hours he worked a week. The Circuit Court entered a preliminary injunction in his favor, and the Commissioners filed a request for expedited consideration of interlocutory appeal with the Indiana Court of Appeals.

The Indiana Court of Appeals decision (now vacated after the Indiana Supreme Court granted cert) considered the issue of “whether elected county officials are per se full-time employees such that counties must provide them with health insurance coverage.” After determining that they are not per se full-time, the Indiana Court of Appeals vacated the preliminary injunction and remanded the case. The court determined that without guidance from the General Assembly, the definition of “full-time” and “part-time” was controlled by federal law. Under IRS guidelines a “full-time employee” worked on average at least 30 hours per week; because Huck averaged nine hours per month, the court determined that he was not a full-time employee and thus could be excluded from health insurance coverage. The court also stated,

[w]e acknowledge that there is no requirement for elected officials to keep a record of hours worked; however, we also acknowledge that local boards are often well-aware of the hours required to be worked by elected officials in their counties. Indiana law favors yielding to the discretion of local rule absent state law to the contrary, and, here, we have no state law to the contrary. . . . We therefore conclude that the General Assembly intended to allow local boards to exercise their common-sense discretion in determining full-time and part-time elected officials.

Though now vacated, the Indiana Court of Appeals’ decision is instructive. Even though local government can determine whether an employee is part- or full-time for purposes of benefits, it cannot mandate a set number of hours (and therefore enforce an FTE) for local elected officials. This suggests again that the 2023 assignment of 85% FTE to the Commissioners is misleading and was done in error.

Of note, during the Indiana Supreme Court oral arguments in *Huck*, Chief Justice Rush emphasized that the Perry County minutes of the meeting at issue listed county commissioner as **a part-time position** (“I pulled up the minutes from the meeting, and they’re clearly, they’re doing this because the county councilmen, coroner, surveyor, commissioners were, you’re all part time. The statute doesn’t allow you to cut compensation based on being part-time.” (5:50)).

According to Matt Pierce, there is also bipartisan legislation that will be enacted in the 2025 session regarding local elected officials and employees. In conjunction with the pending IU Supreme Court opinion in *Huck*, this suggests that it is likely circumspect for the IU General Counsel to wait until the conclusion of the Spring 2025 legislative session.

Finally, consistent standards need to be in effect across all 92 Indiana counties. If standards were not consistent, each local government determination would hold different implications for elected officials' employment opportunities, including affecting whether IU faculty can hold public office while working full-time in their academic positions. This would obviously create absurd results; faculty members in some counties would be permitted to hold certain elected offices like county council or county commissioner that have historically been considered "part-time" while working at IU full-time, but faculty members in other counties would be barred from holding these same positions in conjunction with their academic jobs. Moreover, a local government could change these classifications mid-term, which would obviously have adverse consequences for elected officials. This was never the intention; IU full-time employees have been serving in local and state elected roles for over six decades. A reading to the contrary would have drastic negative implications for IU faculty and staff across the state and would be very damaging to IU – a self-inflicted wound.

**4. There is a robust tradition going back over 60 years of IU employees and faculty that have served in local and state government roles, with several currently active. Changes to IU policies could impact officials currently in office.**

For decades, IU has allowed full-time IU faculty and staff to serve in comparable positions in local and state government. For example, Dr. Tim Tilton, a tenured political science professor, served as county commissioner from 1989 through 1996. There was even a law professor with similar credentials and responsibilities who served as Indiana state representative from 2002 to 2008; Dr. David Orentlicher was the Samuel R. Rosen I Professor of Law, co-director of the Center for Law and Health, and held an adjunct position as professor of medicine at the medical school.

Several IU faculty members currently hold elected office and full-time positions, including Matt Pierce, who was hired as a full-time Senior Lecturer at the IU Media School after he was already serving as a state representative in 2002, and Dr. Victoria Garcia-Wilburn, who was elected in 2023 to the state senate and who just received tenure at IUI. Matt Pierce has shared with me that he routinely works 150% FTE during

the legislative session and has never been told that this violates the IU conflict of commitment policy or any other university policies.

Critically, if for some reason the IU General Counsel should conclude that there is still a conflict between IU's conflict of commitment policy and serving in elected office, it could affect Pierce, Garcia-Wilburn, and others serving on city council and dissuade others from running for elected office. This would be a shame, since there is a robust tradition of IU faculty holding elected office across the state of Indiana, including in Monroe County (see below). Such a stance also could have profound consequences for other local officials, particularly if their salaries are increased. Of note, there is currently a proposal (released 11/27/24) to increase Bloomington city council members' salaries to \$45,000 that will be addressed in a meeting scheduled for Dec. 12, 2024.

### **IU Faculty/Staff Who Were Also Part-Time Elected Officials: 1964 – 2024**

#### **BLOOMINGTON CITY COUNCIL**

HARRY DAY, PROF, CHEMISTRY; 1964-67

DAVID DERGE, PROF, POLYSCI & VP OF ADMIN; 1964-67

WILLIAM MADDEN, PROF, ENGLISH; 1968-69

JAMES ACKERMAN, PROF, RELIGIOUS STUDIES; 1972-75

SHERMAN MIZZELL; PROF, ANATOMY; 1972-75

AL TOWELL, IU COMPUTING; 1972-83

WAYNE FIX, IU REAL ESTATE, 1972-75

HUBERT DAVIS, MINISTER WITH UNIVERSITY MINISTRIES; 1972-75

JOHN PORTER, PROF, BUSINESS SCHOOL; 1981-87

TIM MAYER, ART TEACHER; 1984-2017

KIRK WHITE, ALUMNI & GOVT RELATIONS; 1988-95

JIM SHERMAN, PROF, PSYCHOLOGY; 1992-99

REGINA MILLER, MANAGER, IMU ARTS GALLERY, 1992-94

ANDY RUFF, ADVISOR, BIOLOGY; 2002-19; 23-Present

SUSAN SANDBERG, ADVISOR, SPEA; 2002-23

MARTY SPECHLA, PROF, ECON; 2012-15

ISABEL PIEDMONT-SMITH; ADMIN, FRENCH & ITAL; 2008-11; 2017-PRESENT

JIM SIMS, FACILITY MANAGER; 2017-23

SUE SGAMBELLURI, A&S SR DEVELOPMENT DIR; 2019-23

ISAK ASARE, DIR, IU CYBER CLINIC; HAMILTON-LUGAR SCHOOL 2023-PRESENT

## **COUNTY GOVT**

JOHN IRVINE, DIR, IU STUDENT LEGAL SERVICES & COUNTY COMMISSIONER (1960s & 70s?)

TIMOTHY TILTON, PROF, POLYSCI, & COUNTY COMMISSIONER; 1989-1996

CHERYL MUNSON, RESEARCHER, ANTHROPOLOGY & COUNTY COUNCIL; 2015-Present

TRENT DECKARD, LECTURER, BUSINESS SCHOOL & COUNTY COUNCIL; 2019-Present

DAVID HENRY, INSTRUCTOR, O'NEILL & COUNTY COUNCIL to begin in Jan. 2025

## **STATE LEGISLATORS**

MARILYN SCHULTZ, FRENCH LECTURER AT FRONT END; 1972-86

REP VERNON SMITH, PROF, IU-North, EDUCATION; 1972-Present

REP MATT PIERCE, SENIOR LECTURER, IUB MEDIA SCHOOL, 2002-Present

REP DAVID ORENTLICHER, PROF MCKINNEY LAW; 2002-08

REP REGAN HATCHER, LECTURER, IUN URBAN & AFRICAN AMERICAN STUDIES; 2019-Present

SEN SHELLI YODER, SENIOR LECTURER, KELLY; 2020-Present

SEN VICTORIA GARCIA-WILBURN, PROF, IUI HEALTH & HUMAN SERVICES; 2023-Present