

IC 36-4-4

Chapter 4. Division of Powers of Cities

IC 36-4-4-1

Application of chapter

Sec. 1. This chapter applies to all cities.

As added by Acts 1980, P.L.212, SEC.3.

IC 36-4-4-2

Separation of powers; right of city employee to serve in office

Sec. 2. (a) The powers of a city are divided between the executive and legislative branches of its government. A power belonging to one (1) branch of a city's government may not be exercised by the other branch.

(b) Subject to IC 3-5-9, a city employee other than an elected or appointed public officer may:

(1) be a candidate for any elective office and serve in that office if elected; or

(2) be appointed to any office and serve in that office if appointed;

without having to resign as a city employee.

As added by Acts 1980, P.L.212, SEC.3. Amended by P.L.315-1995, SEC.1; P.L.135-2012, SEC.9.

IC 36-4-4-3

Executive or administrative powers, duties, and functions

Sec. 3. (a) All powers and duties of a city that are executive or administrative in nature shall be exercised or performed by the city executive, another city officer, or a city department.

(b) An ordinance of the city legislative body requiring an executive or administrative function to be performed may:

(1) designate the department that is to perform that function; or

(2) establish a new department or agency to perform that function.

(c) If an executive or administrative function is not assigned by a statute, ordinance, or resolution, the city executive shall assign that function to the proper department or officer.

As added by Acts 1980, P.L.212, SEC.3.

IC 36-4-4-4

Legislative powers and duties

Sec. 4. (a) The legislative power of a city is vested in its legislative body. All powers and duties of a city that are legislative in nature shall be exercised or performed by its legislative body. The legislative body of a city may not elect or appoint a person to any office or employment, except as provided by statute.

(b) The legislative body may manage the finances of the city to the extent that that power is not vested in the executive branch.

As added by Acts 1980, P.L.212, SEC.3.

IC 36-4-4-5

Uncertainty or dispute in nature of power or duty

Sec. 5. (a) If uncertainty exists or a dispute arises concerning the executive or legislative nature of a power or duty exercised or proposed to be exercised by a branch, officer, department, or agency of the government of a municipality, a petition may be filed in the circuit court of the county in which the municipality is located by the municipal executive, another municipal elected official, the president of the municipal legislative body, or any person who alleges and establishes to the satisfaction of the court that the person is or would be adversely affected by the exercise of the power; however, in a county that does not contain a consolidated city and that has a superior court with three (3) or more judges, the petition shall be filed in the superior court and shall be heard and determined by the court sitting en banc.

(b) In a county containing a consolidated city, the petition shall be heard and determined by a five (5) member panel of judges from the superior court. The clerk of the court shall select the judges electronically and randomly. Not more than three (3) members of the five (5) member panel of judges may be of the same political party. The first judge selected shall maintain the case file and preside over the proceedings.

(c) The petition must set forth the action taken or the power proposed to be exercised, and all facts and circumstances relevant to a determination of the nature of the power, and must request that the court hear the matter and determine which branch, officer, department, or agency of the municipality, if any, is authorized to exercise the power. On the filing of the petition, the clerk of the court shall issue notice to the municipal executive, each municipal elected official, and the president of the municipal legislative body, unless the petition was filed by that person, and to the municipal attorney, department of law, or legal division.

(d) The court shall determine the matters set forth in the petition and shall affix the responsibility for the exercise of the power or the performance of the duty, unless it determines that the power or duty does not exist. Costs of the proceeding shall be paid by the municipality, except that if an appeal is taken from the decision of the court by any party to the proceeding other than the municipal executive, another municipal elected official, or the president of the municipal legislative body, the costs of the appeal shall be paid by the unsuccessful party on appeal or in the manner directed by the court deciding the appeal.

As added by Acts 1980, P.L.212, SEC.3. Amended by P.L.69-1995, SEC.5; P.L.141-2007, SEC.3.