

Utility Territorial Jurisdictions

Water Utility Council
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Basic Types of Utilities

- Municipally Owned
- Investor Owned
- Not-for-Profit
- Cooperatively Owned
- Conservancy District
- Regional District

Municipally Owned Water

- IC 8-1.5-2-3 or 8-1.5-4-3
- IC 36-9-2-14 (and in combination with -18)
- IC 8-1.5-2-17(c)
- IC 8-1-2-86.5

Municipally Owned Sewer

- Within Municipality
 - IC 36-1-3-9 and IC 36-9-23 or -9-25
 - IC 36-9-2-16
- Unincorporated Areas
 - IC 36-9-23-36
 - IC 36-9-25-10(1) and (17) and -14
 - IC 36-9-2-16 (in combination with -18)
 - *Re: Fishers Municipal Ordinance No. 030290, Cause No. 38949 (Ind. U.R.C. 3/13/1991 reh'g denied 9/4/1991).*
 - IC 36-9-22-2

Limitations on Municipal Utilities

- 7 U.S.C. 1926(b)
- Home Rule Act
 - IC 36-1-3

7 U.S.C. 1926(b)

“The service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan; nor shall the happening of any such event be the basis of requiring such association to secure any franchise, license or permit as a condition to continuing to serve the area served by the association at the time of the occurrence of such event.”

Pertinent Home Rule Cases

- Merrillville v. Merrillville Conservancy District, 649 N.E.2d 645 (Ind. Ct. App. 1995).
- Plainfield v. Avon, 757 N.E.2d 705 (Ind. Ct. App. 2001).
- City of North Vernon v. Jennings Northwest Regional Utilities, 829 N.E.2d 1 (Ind. 2005).
 - Cumberland v. IDEM, 691 N.E.2d 206 (Ind. Ct. App. 1998).

IOU/NFP/CoOp Water

- Indeterminate Permit
- No CTAs
- If second utility serving within municipality
 - IC 8-1-2-86
- Territory Disputes
 - IC 8-1-2-86.5

Section 86.5

“The commission, after hearing, may, by order, determine territorial disputes between all water utilities.”

- Only three fully litigated cases
 - First two cases:
 - *Re: Flowing Wells, Inc.*, Cause No. 40496 (Ind. U.R.C. 7/16/1997).
 - *Re: Shelburn*, Cause No. 40796 (Ind. U.R.C. 1/7/1998).

Section 86.5

- Third Case: *Re: White River Valley Water Corp.; Re: Morgan Rural Water Corp.*, 182 P.U.R. 4th 456, Consolidated Cause Nos. 40719 and 40757 (Ind. U.R.C. 1/7/1998).
 - Fair Competition
 - Duplication of Facilities
 - Adequacy and Reliability of Service
 - Relative Economic Feasibility of Services (Financing & Rate Comparison)
 - Customer Preference
 - Logical Growth of Existing Facilities and Utilization of Existing Facilities
 - Other Considerations

IOU/NFP/CoOp Sewer

- Indeterminate Permit
- Municipal Franchise
- Certificate of Territorial Authority
 - IC 8-1-2-89
 - Exclusive vs. “Public Utilities”

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Conservancy Districts

- Sewer or water service
- Formed by landowners or municipalities in circuit court
- No direct IURC jurisdiction over initial service areas
- Service outside boundaries

Regional Districts

- Formed by “eligible entities” in IDEM proceeding
- No IURC jurisdiction
 - But see IC 8-1-30
- District boundaries
- Exclusivity of service territory?

North Vernon v. JNRU

The Holding:

“[W]here there is an overlap between the service area of a regional district and the service area of a municipality, and absent a resolution during the IDEM permitting process, under the ‘expressly granted’ provision of the Home Rule Act, the district prevails unless the municipality was already providing services to the area at the time the district’s service area was created.”

Scenario 1



Municipal
Corporate
Limits

Scenario 2



Municipal
Corporate
Limits

Scenario 3



Municipal
Corporate
Limits

Scenario 4



**Municipal
Corporate
Limits**

Scenario 5



**Municipal
Corporate
Limits**

Scenario 6



Municipal
Corporate
Limits

Scenario 7



Municipal
Corporate
Limits

Scenario 8



Municipal
Corporate
Limits

Scenario 9



Municipal
Corporate
Limits

Avoiding/Resolving Disputes

- Communication
- Boundary Agreement
 - Anti-Trust Issues
- Cooperation/Partnership
- Acquisition/Merger
- Condemnation
- Legislation?

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