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to the  
Board of Commissioners

2293 N. Main St. • Crown Point, IN 46307  
219-755-3058 ~ Fax 219-648-6138

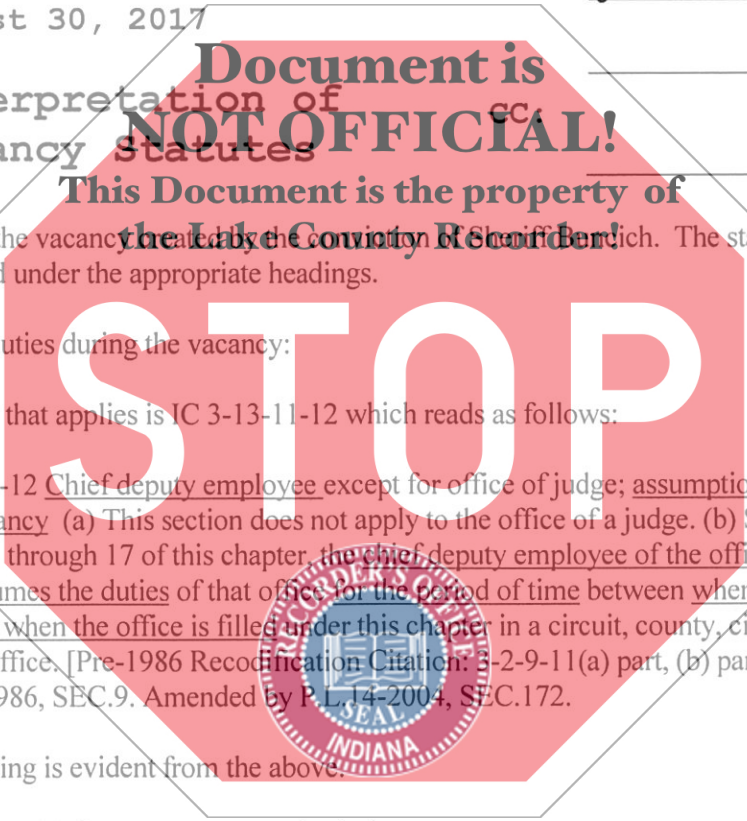
TO: Whom it May Concern

*[Handwritten Signature]*  
John Dull,  
Commissioners' Attorney

2017058897

Date: August 30, 2017

Re: Interpretation of  
Vacancy Statutes



Attached is my analysis of the vacancy created by the county of Sheriff Berlich. The statutes that apply are listed in order and discussed under the appropriate headings.

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD  
2017 AUG 30 PM 3:53  
MICHAEL B. BROWN  
RECORDER

1. Who assumes the duties during the vacancy:

A. The statute that applies is IC 3-13-11-12 which reads as follows:

IC 3-13-11-12 Chief deputy employee except for office of judge; assumption of duties during vacancy (a) This section does not apply to the office of a judge. (b) Subject to sections 13 through 17 of this chapter, the chief deputy employee of the office that is vacant assumes the duties of that office for the period of time between when a vacancy occurs and when the office is filled under this chapter in a circuit, county, city, town, or township office. [Pre-1986 Recodification Citation: 3-2-9-11(a) part, (b) part.] As added by P.L.5-1986, SEC.9. Amended by P.L.14-2004, SEC.172.

B. The following is evident from the above:

- 1) The Chief Deputy assumes the duties.
- 2) The office remains vacant until it is filled by the caucus.
- 3) The Chief Deputy does not fill the office, but it remains vacant.

2. If there is no Chief Deputy or the Chief Deputy declines or is ineligible to serve, then the statute that applies is IC 3-13-11-13 which reads as follows:

A. IC 3-13-11-13 Chief deputy employee except for office of judge; appointment if position declined, person ineligible, or position not established Sec. 13. (a) This section does not apply to the office of a judge. (b) In accordance with section 12 of this chapter, if a chief deputy employee does not exist in a circuit or county office, or the chief deputy employee declines or is ineligible to serve, the board of county commissioners shall appoint, as soon as is reasonably possible, a person to assume the duties of the office until the office is

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filled under this chapter. (c) If a circuit contains more than one (1) county, the boards of county commissioners of the counties shall meet in joint session at the county seat of the county that contains the greatest percentage of population of the circuit to appoint an individual under this section. [Pre-1986 Recodification Citation: 3-2-9-11(a)(4).] As added by P.L.5-1986, SEC.9. Amended by P.L.3-1993, SEC.228; P.L.14-2004, SEC.173.

B. This section does not apply because there was a Chief Deputy in the Sheriff's Office that did not decline.

3. Rights and Duties of the Chief Deputy Assuming the Duties of a Vacant Office

A. The statutes that applies is IC 3-13-11-18 which reads as follows:

**IC 3-13-11-18** Rights and duties of person assuming duties of vacant office Sec. 18. A person who assumes the duties of a vacant office under this chapter has all of the office's rights and duties. Except as provided in IC 3-13-6, the person serves for the remainder of the unexpired term. [Pre-1986 Recodification Citation: 3-2-9-11(c).] As added by P.L.5-1986, SEC.9. Amended by P.L.38-1999, SEC.69

B. Assuming the duties of vacant office does not fill the office. For every duty there is a corresponding right and vice versa. Thus, the Chief Deputy has all of the rights to carry out the duties of the office that is vacant.

C. There is no limit on the rights that the Chief Deputy can exercise as long as those rights are related to a duty. The Chief Deputy would have the duty to protect the public and therefore would have the right to take any action to protect the public.

D. As it relates to vacant positions, the protection of the public would include the duty to fill all authorized positions and therefore the Chief Deputy would have the right to fill those positions as long as those positions were already in existence.

E. The only exception to this rule would be that under IC 36-8-10-10(c). The Sheriff would have the right to establish a temporary administrative rank or position within the county police department and appoint a county police officer that has served as a county police officer for 5 years to a temporary administrative rank or position without the approval of the merit board. Thus, the Chief Deputy who assumed the duties of the Office of Sheriff when the vacancy was created would have the right to appoint a person to a temporary position or rank.

F. The rights and duties of the Chief Deputy would include the right to the pay of the Office of Sheriff even though the Chief Deputy is not filling that office and it remains vacant.



**OFFICE OF THE LAKE COUNTY RECORDER**

LAKE COUNTY GOVERNMENT CENTER  
2293 NORTH MAIN STREET  
CROWN POINT, INDIANA 46307



**MICHAEL B. BROWN**  
Recorder

PHONE (219) 755-3730  
FAX (219) 755-3257

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