

ALERTS

**Government Services And Finance Law Alert -
Mayor Cannot Remove Utility Superintendent**

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The Indiana Supreme Court recently ruled that the former mayor of the City of Lawrence, Indiana, lacked authority to unilaterally terminate the city's utility superintendent. The dispute, *City of Lawrence Utils. Serv. Bd. v. Curry*, arose in 2011 after the then newly elected mayor of Lawrence terminated the utility superintendent, citing differences in objectives for the city's municipally-owned utilities.

In its analysis, the court initially noted that, while a utility service board generally has the authority to appoint and remove a utility superintendent under Ind. Code 8-1.5-3, such authority is "subject to" the mayor's authority to appoint and remove a department head under Ind. Code 36-4-9 and 36-4-11. Id. at 2-8. The court then turned to those chapters and found that, in this case, the mayor's statutory removal authority under Ind. Code 36-4-9-4 was not triggered because the city had not established a Department of Utilities or a department head position under Ind. Code 36-4-9-4(c)(7) Id. The court therefore determined that the utility superintendent's termination fell under the statutory process contained in Ind. Code 8-1.5-3, where "the superintendent may [only] be removed by the [utility service board] for cause at any time after notice and hearing."

In its conclusion, the court noted that its decision "may well offend sound public policy" but reiterated "that its job 'is to interpret, not legislate, the statutes before [it].'"

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