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To: President Pro Tempore David C. Long

From: Jeff Papa

Date: June 24, 2009

RE: Consequences of not adopting a budget measure by July 1, 2009

You have asked me to put into writing a summary of our prior discussions regarding the June 19, 2009 memo on this topic produced by Legislative Services Agency (LSA). The memo appears sound in its research and logic, as well as its conclusion that with limited exceptions, Indiana government will cease to operate on July 1, 2009 without adoption of a budget measure prior to that date.

LSA notes that IC 4-13-2-18 holds void and illegal payments made without proper authorization and that state officials making such payments may be held personally liable. Article 10, Section 3 of the Indiana Constitution also forbids monies being drawn from the Treasury other than through an appropriation made by law. The *Carr*<sup>1</sup> case held that Legislatures may block the operation of government simply by refusing to make an appropriation, even in the case of just claims and that other bodies have no power to force the legislature to make an appropriation.

LSA describes IC 4-10-15, which allows state officers to make appropriations when a budget is not adopted, but ONLY for psychiatric hospitals, the School for the Deaf, the School for the Blind, the Veterans' Home, and the Plainfield Juvenile Correctional Facility. Due to the limiting nature of this statute, LSA believes a court would prohibit drawing of monies for any other purpose not listed.

LSA does note that state officers of the executive branch may be able to seek a judicial declaration of any additional spending power they may have, although this would certainly be untimely, confusing and unprecedented. A recent Kentucky case is cited where a plan implemented by the Governor of that state to continue spending at the prior year's level after the

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<sup>1</sup> 26 N.E.2d 778 (Ind. 1891).

legislature failed to pass a budget was found unconstitutional. The court modified the plan and allowed only a few limited expenditures that were viewed as constitutional mandates, such as operation of schools. It is unclear how Indiana courts would view this, and any such action cannot be counted upon as it would be in violation of existing statutes. Additionally, agencies such as the Auditor and Treasurer which would be needed to process any such payments would be unavailable as there would be no funding for personnel to process those payments.

Furthermore, an analysis by the National Conference of State Legislatures classified Indiana as a state in which government must shut down in the absence of an approved budget. LSA agreed with this analysis and further stated that the Indiana Governor has no inherent ability to spend money to faithfully continue execution of the laws. The Governor also has no authority to continue operating even public safety agencies such as the State Police, Department of Corrections and the Department of Homeland Security.

A few limited exceptions in addition to the five institutions that may continue operations were the federal portion of Medicaid funding (but not the State matching payments) may continue to be disbursed (although the state employees who process these funds would not be working), individual school corporations may be able to borrow funds on their own to continue operations, and noncode bonding authority for capital projects listed in previous budgets may not expire. The LSA memo concludes that Indiana is a "shutdown state" in the absence of an appropriations measure of some type being adopted prior to July 1, 2009.