

ORDINANCE NO. 1996-8

**An Ordinance of the Town of Fort Branch, Indiana
Creating a Cash Reserve Fund for the Water Utility**

WHEREAS, the Water Utility for the Town of Fort Branch has surplus earnings as defined by IC 8-1.5-3-11, and

WHEREAS, the Town Council desires to create a cash reserve fund for the Water Utility pursuant to IC 8-1.5-3-11.

NOW THEREFORE, Be it ordained by the Council of the Town of Fort Branch, Indiana, as follows:

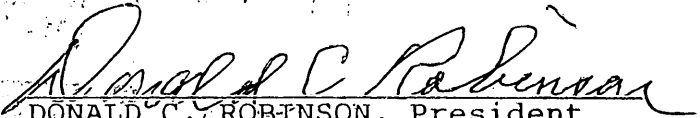
Section 1. A cash reserve fund is created for the Town of Fort Branch Water Utility and carried on the records of the utility by transferring to the cash reserve fund surplus earnings in the amount of \$75,000.00.

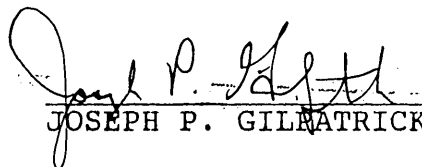
Section 2. The Town Council may from time to time by ordinance transfer additional funds from surplus earnings to the Water Utility cash reserve fund.

Section 3. This ordinance shall be in full force and effect from and after its passage.

PASSED AND ADOPTED by the Council of the Town of Fort Branch, Indiana, this 4th day of September, 1996.

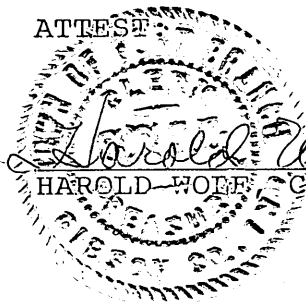
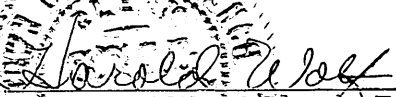
COUNCIL OF THE TOWN OF
FORT BRANCH, INDIANA


DONALD C. ROBINSON, President


JOSEPH P. GILPATRICK


GERALD L. BLEDSOE

ATTEST:



HAROLD WOLF, Clerk-Treasurer

RAY M. DRULEY

ATTORNEY AT LAW
505 North Church Street
P. O. Box 146
Fort Branch, Indiana 47648

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(812) 753-4612

September 24, 1996

Harold Wolf
Clerk-Treasurer
Town of Fort Branch
P.O. Box 40
Fort Branch, IN 47648

Re: Cash Reserve Fund for the Water Utility

Dear Mr. Wolf:

As per your request, I am giving you my opinion on the legality of creating a cash reserve fund for the water utility and then transferring money from that fund to the general fund.

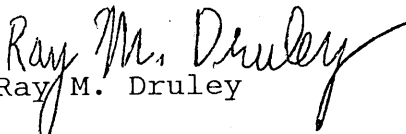
Indiana Code 8-1.5-3-11 clearly authorizes a cash reserve fund. It is my opinion that Ordinance No. 1996-8 legally creates such cash reserve fund for the water utility.

Indiana Code 8-1.5-3-11(d) authorizes the Town Council to include in the municipal general budget, as revenue in lieu of taxes, an amount equal to the actual balance in the cash reserve fund as of June 30 of the current year. If this is done, then the cash reserve fund balance may be transferred to the municipal general fund during the calendar year for which the budget was adopted.

Since the cash reserve fund was not created until after June 30 of this year, money from the cash reserve fund can be transferred to the general fund only if you receive an additional appropriation. ~~If you do receive an additional appropriation,~~ then by ordinance money can be transferred from the cash reserve fund to the general fund for the amount of the additional appropriation during the calendar year for which the additional appropriation was adopted.

If you have any questions, I would be glad to discuss this with you.

Sincerely,


Ray M. Druley

RMD:ard

RAY M. DRULEY

ATTORNEY AT LAW
505 North Church Street
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October 2, 1996

Harold Wolf
Clerk-Treasurer
Town of Fort Branch
P.O. Box 40
Fort Branch, IN 47648

Re: Cash Reserve Fund for the Water Utility;
addendum to opinion letter.

Dear Mr. Wolf:

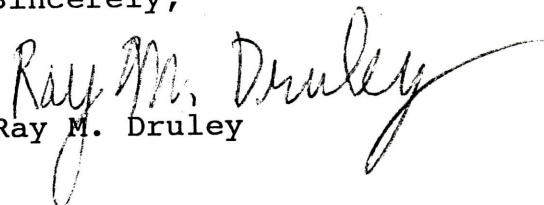
Reference is made to my letter to you dated September 24, 1996, concerning the water utility cash reserve fund. Subsequent to that letter, I have discussed the matter with Charley Pride of the State Board of Accounts.

It is the opinion that funds can be transferred by ordinance to the general fund from the cash reserve fund at anytime without an obtaining an additional appropriation. According to Mr. Pride, two State Board of Account attorneys have researched the statute, Indiana Code 8-1.5.3-11, and both have concluded that regardless of when the cash reserve fund was created, no additional appropriation is required to transfer funds to the general fund.

It is therefore my opinion that you can at anytime by ordinance transfer funds from the water utility cash reserve fund to the general fund. You can spend the money without obtaining an additional appropriation, provided there is an existing appropriation available. Obviously, you cannot spend funds if there is no appropriation, and obviously total spending cannot exceed existing appropriations.

If you have any questions, I would be glad to discuss this with you.

Sincerely,


Ray M. Druley

RMD: ard

SEPTEMBER 26, 1996

RE: IC 8-1.5-3-11 CASH RESERVE FUND OF A UTILITY.

I spoke with Charlie Pride with the State Board of Accounts this morning to ask for clarification of the Utility Cash Reserve Fund. I asked if we had to ask for an additional appropriation as well as an ordinance before we can spend money from this fund, before it can be spelled out in a Budget and listed as a source of revenue of that budget. He told me that as long as the Town Board has declared a surplus in a utility and the CASH RESERVE FUND has been established, the only action needed after that time is for the Town Board to pass an ordinance and transfer the money to the General Fund. Once this has been done, the money can be spent for anything it needs to be used for, so long as we have an appropriation approved for the expenditure. I went on to tell him that we were having a problem with understanding the way the law is written. He told me, "As for as the State Board of Accounts is concerned, this law is wide open and as long as the account has been established and funded the money can be spent in any way it is needed." He also said that the State Board's attorney, Susan Gordon, has done a lot of work on this particular law and the above is what she has determined. I also asked him about paragraphs 3, 4 & 5, as listed in the "Cities and Towns Bulletin" dated September 1994 - Page 2. He said after you have read through paragraphs 1 & 2 you can stop reading. I then said, "Well in summary then, we can go ahead and pass an ordinance as of now to transfer the money to the general fund?" Charlie said, "That is what I'm telling you, and after all we are the only people you have to answer to."

Harold Wolf, Clerk-Treasurer *HW*