

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

BELA KOVACS, acting individually and in  
his official capacity as Kootenai County  
Assessor,

Petitioner,

v.

KOOTENAI COUNTY, a political  
subdivision and governmental agency of the  
State of Idaho, BILL BROOKS, individually  
and in his official capacity as a member of the  
Board of County Commissioners, CHRIS  
FILLIOS, individually and in his official  
capacity as a member of the Board of County  
Commissioners, LESLIE DUNCAN,  
individually and in her official capacity as a  
member of the Board of County  
Commissioners,

Respondents.

Case No. CV28-22-5938

MEMORANDUM ORDER AND DECISION  
ON PETITION FOR JUDICIAL REVIEW

This matter involves a petition for judicial review of Respondents Kootenai County and the Board of County Commissioners' (Board) decision to reduce Petitioner Bella Kovacs' (Kovacs) salary starting October 1, 2022. On August 31, 2022, the Board voted to reduce Kovacs' salary as the Kootenai County Assessor by approximately half, to \$45,000 annually. On September 1, 2022, the Board met and approved the Assessor's salary reduction in the Fiscal Year 2023 budget. The Board also denied Kovacs the 6% cost of living increase given to all

other county employees. Kovacs appeals the Board's Final Orders reducing his salary and denying him a cost of living increase.

## **I. FACTS AND PROCEDURAL HISTORY**

In May 2020, the Board unanimously appointed Kovacs as Kootenai County Assessor following his nomination by the Kootenai County Republican Central Committee pursuant to Idaho Code § 59-906.<sup>1</sup> A little over two years later, the Board held a Fiscal Year 2023 budget hearing on August 31, 2022, during which Chairman Fillios read the following statement:

The BOCC has been approached with great concerns from Assessor employees, other employees and Elected Officials regarding the performance of the Assessor Bela Kovacs. Bela has demonstrated an inability to adequately fulfill the role of Assessor. The BOCC has evaluated his skill set, experience and talents. Members of the BOCC have discussed with Bela his failure to perform statutory duties. Bela has demonstrated with his action that he lacks insight to evaluate his own performance. Therefore the BOCC has concluded the failure of Bela to meet his statutory duties, including deadlines, and his refusal to take any responsibility for the performance of himself and his staff, and so we find it necessary and we'll take this up later, potentially in a motion, to reduce his salary approximately in half to about \$45,000 per year.

(Tr. of Hr'g on August 31, 2022).

Later in the meeting, the Board allowed Kovacs three (3) minutes to address the room. There is no evidence on the record regarding the denial of the 6% cost of living increase.

The record reflects that the budget was adopted on September 1, 2022, and took effect on September 25, 2022. At oral argument on March 17, 2023, Petitioner stated that Kovacs' salary was reduced for the remaining 3-4 months of his elected term.

## **II. ISSUES PRESENTED**

A. Does the Board have the constitutional and statutory authority to fix the Assessor's salary?

---

<sup>1</sup> Kovacs predecessor passed away, leaving the position vacant.

- B. Was the Board's administrative decision to cut Kovacs' salary in error as specified in Idaho Code § 67-5279(3)?
- C. Was a substantial right of Kovacs' prejudiced?

### III. STANDARD OF REVIEW

A person may seek judicial review of a decision of a board of county commissioners pursuant to Idaho Code (I.C.) § 31-1506(1) - “[u]nless otherwise provided by law, judicial review of any act, order or proceeding of the board shall be initiated by any person aggrieved thereby within the same time and in the same manner as provided in chapter 52, title 67, Idaho Code, for judicial review of actions.” I.C. § 31-1506(1). A petition for judicial review is conducted according to the Idaho Administrative Procedure Act (IAPA), enumerated in Chapter 52, Title 67 of the Idaho Code.

Under I.C. § 67-5277, “[j]udicial review shall be conducted by the court without a jury. Unless otherwise provided by statute, judicial review of disputed issues of fact must be confined to the agency record for judicial review as defined in this chapters, supplemented by additional evidence taken pursuant to section 67-5276.” Idaho Code 67-5279(1) provides that “the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.”

The party appealing the board decision must first show that the board “erred in a manner specified in I.C. § 67-5279(3), and then it must show that a substantial right has been prejudiced.” *Wohrle v. Kootenai County*, 147 Idaho 267, 274, 207 P.3d 998, 1005 (2009). Idaho Code § 67-5279(3) and (4) states:

- (3) When the agency was required by the provisions of this chapter or by other provisions of law to issue an order, the court shall affirm the agency action unless the court finds that the agency's findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) not supported by substantial evidence on the record as a whole; or
- (e) arbitrary, capricious, or an abuse of discretion.

If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section, agency action shall be affirmed unless substantial rights of the appellant have been prejudiced.

#### IV. ANALYSIS

A. Does the Board have the constitutional and statutory authority to fix the Assessor's salary?

“The board of county commissioners has only such powers as are expressly or impliedly conferred upon it by statute.” *Prothero v. Bd. of Comm'rs of Twin Falls Cnty.*, 22 Idaho 598, 127 P. 175, 175 (1912). The Idaho Constitution, Article 18 is titled “County Organization.” Idaho Const. Art. XVIII. Section 5 provides that the Idaho Legislature shall establish a uniform system of county governments. Idaho Const. Art. XVIII, § 5. Section 6 governs “County Officers” and provides for the election of county officers, defined as “a sheriff, a county assessor, a county coroner and a county treasurer...” Idaho Const. Art. XVIII, § 6. Section 7 goes on to say “[a]ll county officers and deputies when allowed, shall receive, as full compensation for their services, fixed annual salaries, to be paid monthly out of the county treasury...” Idaho Const. Art. XVIII, § 7. The Idaho Legislature then delegated this authority to the counties in I.C. § 31-3106, which states “[i]t shall be the duty of the board of county commissioners of each county, through the county budget process, as detailed in chapter 16, title 31, Idaho Code, to fix the annual salaries of the several county officers as of and from October 1 for the next ensuing year.” The Board has

the constitutional and statutory authority to fix a county officers salary, including that of the Assessor.

B. Was the Board's administrative decision to cut Kovacs' salary in error as specified in Idaho Code § 67-5279(3)?

Kovacs contends that even if the Board had the authority to fix his salary as the Assessor, it did so in violation of I.C. § 67-5279(3)(c), (d), or (e) – i.e. that the Board's decision was:

- (c) made upon unlawful procedure;
- (d) not supported by substantial evidence on the record as a whole; or
- (e) arbitrary, capricious, or an abuse of discretion.

It is instructive to review *Reynolds et al. v. Board of Com'rs of Oneida County*, 6 Idaho 787, 59 P. 730 (1899). The Idaho Supreme Court found that the ability of a board of commissioners to fix the salary of county officers provided “general and uniform operation throughout the state.” *Id.* at 788, 59 P. at 731.

It fixes the basis upon which the salary of county officers in each county in the state is to be fixed. That basis is the same in each, and is reasonable compensation for the services to be performed, taking into consideration the character of the services, amount of labor to be performed, and such surrounding circumstances as affect the cost of living and supporting one's self at the county seat of his county compatible with the dignity of the office to which he has been elected.

*Id.* at 788, 59 P. at 731.

But the interests of all – both officeholder and taxpayer – demand that salaries should be fixed at such sums as will reasonably compensate each officer for his time and labor, taking into consideration the qualifications necessary to be possessed by each county officer, and the responsibilities of his office. All of these matters should be carefully investigated and determined by the board of commissioners. The board should exercise the discretion vested in it with due regard for the rights of all parties concerned. It was not intended by the legislature that the action of the board of commissioners should be final, or that such board might act arbitrarily, through mere whim or caprice.

*Id.* at 788, 59 P. at 731-32.

As discussed above, the Board has the authority to fix the county budget, and to fix the salaries of county officers. Logically, this provides the Board with the ability to reduce a salary,

as well increase a salary amount. The question is whether the Board's decision to sharply reduce Kovacs's salary was supported by substantial evidence on the record as a whole and whether the Board's decision was arbitrary, capricious, or an abuse of discretion under I.C. § 67-5279(3)(d) or (e).

When analyzing a county board of commissioners' decision to determine if it was supported by substantial evidence pursuant to I.C. § 67-5279(3)(d), this Court will not substitute its judgment for that of the board regarding the weight of the evidence on questions of fact. The county board of commissioners' factual determinations are binding on the reviewing court, even where there is conflicting evidence, so long as the determinations are supported by substantial and competent evidence. Substantial and competent evidence is "relevant evidence which a reasonable mind might accept to support a conclusion."

*Wohrle v. Kootenai County*, 147 Idaho 267, 274, 207 P.3d 998, 1005 (2009)(internal citations removed).

The question is not what we (the court) think these salaries ought to be or what the able trial judge thought they should be, but is rather, all the circumstances being considered, whether the order of the board clearly exceeded the bounds of reason and constituted such an abuse of power as to show that the board failed to exercise a legal discretion.

[A]n abuse of discretion occurs only when the tribunal or board charged with its exercise "exceeds the bounds of reason all the circumstances before it being considered," and "\*\*\* the court should not revise their action (the board's) in the absence of clear evidence of such manifest abuse of power and disregard of the statute as to show that the board failed to exercise a legal discretion.\*\*\*"

*Huffaker v. Bd. of Comm'rs of Bonneville Cnty.*, 54 Idaho 715, 35 P.2d 260, 261 (1934).

In *Huffaker*, the Board of County Commissioners of Bonneville County reduced the salary of the clerk of the probate court from \$95 per month to \$50 per month, a decrease by approximately half. *Id.* at --, 35 P.2d at 260. The evidence considered "covered the field of salaries of similar officials in other counties, and the relative amount of work required of the clerk of the probate court and other similar positions, both in Bonneville and other counties in the southern and southeastern part of the state." *Id.* at --, 35 P.2d at 261. The board's

reasoning was that the clerk in the probate court only needed to be employed in that position half time. *Id.* The Supreme Court found that the board did not abuse its discretion. *Id.*

In *Criddle v. Board of Com'rs of Bonneville County*, the board of commissioners of Bonneville County fixed the salaries of the county officers, and in several cases, lowered the annual salary. 42 Idaho 811, 248 P. 465 (1926). Three appeals were taken from the action of the board to the district court. *Id.* at --, 248 P. at 466. The district court found that because the board did not take into consideration specific facts the court deemed important, that the board had abused its legal discretion, and therefore found in appellants' favor. *Id.*

In overturning the district court, the Supreme Court noted that “[t]he commissioners heard no evidence before making the order.” *Id.* The only facts before the board when it made its decision came from the testimony of one member of the board. *Id.* However, the Supreme Court also noted that it appeared from the testimony of that one board member, that the board had, in fact, considered a substantial amount of information.

... it had the reports of the officers and auditors and that information that naturally comes to it on account of the performance of its duties: The board supervises the official conduct of all the county officers; it authorizes the employment of necessary clerks and assistants and fixes their salaries; it passes on claims against the county and makes the tax levy to bring funds into the treasury with which to pay the county's expenses. The testimony of the one member of the board shows that, while the board may not have possessed as full a knowledge of the duties of the various officers as it would have been possible to acquire, it did have a general comprehension of the statutory duties of the various officers, the time and labor required in their performance, the character of the services required, as well as the responsibilities imposed. Inquiries were made with respect to salaries paid by business concerns for assistants, the cost of living, and salaries paid to like officers of other counties of the state.

*Id.* In overruling the district court's reversal, the Supreme Court further found that:

... it would seem that in requiring the board to fix the salaries of county officers, the Legislature must have had in mind the fitness of the board for such purpose, the legal duties of the members of the board, and the knowledge naturally acquired by them in performing such duties. On this account, and in the absence

of a requirement that in fixing such salaries the board must take any *specific* facts into consideration, it may be reasonably concluded that the Legislature intended that the board would, from its own knowledge of the county's business and from a fair consideration of all the facts and circumstances relating thereto, fix the salaries pertaining to such county offices within the legal limitations and at such sums as would be fair and just to the holders of the offices on the one hand and the county on the other.

*Id.* at --, 248 P. at 466-67. Finally, the Supreme Court stated:

In view of all the facts and circumstances, it does not appear that the salaries fixed were so inadequate as to constitute an abuse of discretion. The question is not what we think these salaries out to be or what the able trial judge thought they should be, but is rather, all the circumstances being considered, whether the order of the board clearly exceeded the bounds of reason and constituted such an abuse of power as to show that the board failed to exercise a legal discretion.

*Id.*

Lastly, both parties have referenced *La Brosse v. Board of Commissioners, Boundary County*, 105 Idaho 730, 672 P.2d 1060 (1983). *La Brosse* presents the reasoning behind the constitutional restriction for "fixed annual salaries." *Id.* at 733, 627 P.2d at 1063.

The stated reasons for such restrictions are: (1) to remove from the governing body the temptation of influencing the public officer through the use of a salary increase or decrease; 2) to protect the officer against legislative oppression which might flow from party rancor, personal spleen, enmity, or grudge; and (3) to establish definiteness and certainty as to the salary pertaining to the office.

*Id.* (internal citations omitted).

In the present case, similar to *Criddle*, the Board heard no evidence (other than Kovacs' allotted three minutes to speak) before making its decision. The only facts before the board when it made its decision came from the testimony of one board member, Chairman Fillios, who read the following statement:

The BOCC has been approached with great concerns from Assessor employees, other employees and Elected Officials regarding the performance of the Assessor Bela Kovacs. Bela has demonstrated an inability to adequately fulfill the role of Assessor. The BOCC has evaluated his skill set, experience and talents. Members of the BOCC have discussed with Bela his failure to perform statutory duties. Bela has demonstrated with his action that he lacks insight to evaluate his own



performance. Therefore the BOCC has concluded the failure of Bela to meet his statutory duties, including deadlines, and his refusal to take any responsibility for the performance of himself and his staff, and so we find it necessary and we'll take this up later, potentially in a motion, to reduce his salary approximately in half to about \$45,000 per year.

(Tr. of Hr'g on August 31, 2022).

Chairman Fillios referenced concerns from “Assessor employees, other employees and Elected Officials” regarding Kovacs performance as Assessor. *Id.* It appears that Board had a general comprehension of the statutory duties of the office, as it discussed with Kovacs “his failure to perform statutory duties.” *Id.* While a board of commissioners may use the knowledge naturally acquired by them in the performance of their duties, and its own knowledge of county business in making an administrative decision, in fixing the salary of a county official the Board must make its decision “from a fair consideration of all the facts and circumstances relating thereto.” *Criddle* at --, 248 P. at 466-67. While a board of commissioners is not required to take *specific* facts into consideration when fixing a county official’s salary, it must still make “a fair consideration of all the facts and circumstances relating thereto.” *Id.*

Here, the record shows that the Board based its decision to reduce Kovacs salary on its review of his job performance and the reduction was in response to his failure to meet the requirements of the position. Unlike *Criddle*, there is no evidence on the record that the Board considered whether the requirements of the job had changed, or that there was any change in the statutory duties of the office, the time and labor needed to fulfill those duties, the character of the services required by the position, or compared salaries paid to like officers of other counties of the state. There was no record that the Board considered what a fair and just salary would be for the *holder of the office* of Assessor.

The logic behind the Board's decision, from the record, appears to be that because Kovacs has (in the past) failed to fulfill all the duties of Assessor that it was necessary and appropriate to reduce Kovacs salary by approximately half for the upcoming fiscal year. However, because the position of Assessor is an elected position, this reduction in salary not only affected Kovacs for his remaining term limit, but it affects whomever was elected and set to take over in January. While the Board positions the reduction as a reaction to Kovacs failure to perform all the duties of the job, the reality is that by changing the salary for the Assessor, the Board has essentially said that the full performance of the Assessors' statutory duties and responsibilities is worth \$45,000, not the original \$90,000.

As stated in *Reynolds*, fixing the salary of county officers should be based on reasonable compensation for the services to be performed and the responsibilities of the office. *Huffaker* shows that when the scope of a position changes, or the responsibilities change, a reduction in salary reflective of those changes is appropriate. Here, the record is clear that duties and responsibilities of the Assessor remain the same. Whether or not Kovacs (or a successor) adequately fulfills those duties and responsibilities does not eliminate those duties or responsibilities required from the position.

This court does not have an opinion on what the salary of the Assessor should be. However, when fixing the salary of the Assessor, the Board's decision must be based on reasonable compensation for the services to be performed, and be supported by substantial evidence on the record. Here, there is no evidence that the services to be performed have changed; the only information is that the performance of those services has been found lacking. This court will not substitute its judgment for the Board regarding the evidence it put forward on the record, namely, that Kovacs has failed to adequately perform his statutory duties. On the

other hand, there is not substantial evidence on the record that a reduced salary of \$45,000 is fair and just to the holder of the office when performing the statutory duties and obligations of the office.

In view of all the facts and circumstances, it does not appear that there was substantial evidence on the record to support the Board's decision to reduce the Assessor's salary to \$45,000. While the court does not have an opinion as to what the salary of the Assessor should be, the reduction from approximately \$90,000 to \$45,000 while still performing the same duties and responsibilities, exceeds the bounds of reason, is arbitrary, and is an abuse of discretion.

C. Was a substantial right of Kovacs' prejudiced?

The final prong of I.C. § 67-5279 states that "(4) Notwithstanding the provisions of subsections (2) and (3) of this section, agency action shall be affirmed unless substantial rights of the appellant have been prejudiced." The term "substantial right" is not defined. Neither party has submitted argument attempting to define what is considered a substantial right. Nevertheless, this court finds that Kovacs has a right to reasonable compensation for the services he is required to perform in the position he held. Kovacs salary was cut in half for 3-4 months before he was re-elected, and has remained at the reduced rate during his following elected term. The significant reduction in salary, while having the same, continuing requirements in fulfilling the position's duties and responsibilities, was prejudicial to a substantial right of Kovacs.

**V. COST OF LIVING ADJUSTMENT**

On September 1, 2022 the Board approved the adoption of the budget, which, among other things, included a 6% cost of living adjustment (COLA) for each elected official, with the Assessor being specifically excluded. (Tr. of Hr'g on September 1, 2022). There is no evidence on the record before this court to support the Board's decision regarding the COLA. There is no

evidence on the record before this court to determine why the increase was granted to every other elected official, and why the Assessor was specifically excluded. Applying the same legal analysis used in the foregoing sections, this court finds that the Board's decision to grant a cost of living increase to every other elected official, and to specially exclude the Assessor from receiving the same cost of living increase, was not supported by substantial evidence on the record as a whole under I.C. § 67-5279(3)(d). Additionally, for the same and similar reasons stated earlier, Kovacs has a right to reasonable compensation for the services to be performed, taking surrounding circumstances – such as the cost of living and the ability to support one's self in the county – into consideration, and such right was prejudiced by this action.

## **VI. ATTORNEY'S FEES**

Kovacs seeks attorney's fees pursuant to Idaho Code § 12-117(1) and 12-117(4).

I.C. § 12-117(1) : Unless otherwise provided by statute, in any proceeding involving as adverse parties a state agency or a political subdivision and a person, the state agency, political subdivision or the court hearing the proceedings, including on appeal, shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law.

I.C. § 12-117(4) : In any civil judicial proceeding involving as adverse parties a governmental entity and another governmental entity, the court shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses. For purposes of this subsection, "governmental entity" means any state agency or political subdivision.

I.C. § 12-117(6)(d) : "Political subdivision" means a city, a county, any taxing district or a health district.

I.C. § 12-117(6)(f) : "State agency" means any agency as defined in section 67-5201, Idaho Code.

I.C. 67-5201(2) : "Agency" means each state board, commission, department or officer authorized by law to make rules or to determine contested cases, but does not include the legislative or judicial branches, executive officers listed in section 1, article IV of the constitution of the state of Idaho in the exercise of

powers derived directly and exclusively from the constitution, the state militia or the state board of correction.

While this court does find that Kovacs is the prevailing party, it does not find that the Board acted without a reasonable basis in fact or law, and therefore declines to award attorney fees under I.C. § 12-117(1).


Under I.C. § 12-117(4), this court does not find that Kovacs, even in his official capacity as Kootenai County Assessor, is a political subdivision or state agency as required by the statute. Kovacs, while an elected official, is not a “state board, commission, department or officer authorized by law to make rules or to determine contested cases” as required under the definition of “agency” under I.C. § 67-5201(2). Thus, Kovacs is not entitled to attorney’s fees under I.C. § 12-117(4).

#### **VII. CONCLUSION AND ORDER**

For the reasons stated above, the agency action reducing Kovacs’ salary and excluding him from the 6% cost of living increase is set aside and is this matter is remanded to the Kootenai County Board of Commissioners with instructions to reinstate the Assessor’s previous salary retroactive to September 25, 2022 with a 6% cost of living increase for Fiscal Year 2022-2023.

IT IS SO ORDERED.

DATED: 5/4/2023 4:11:03 PM .

  
\_\_\_\_\_  
**Susie Jensen**  
**District Judge**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on \_\_\_\_\_, <sup>5/10/2023 12:50 PM</sup>  
to:

D. Colton Boyles  
BOYLES LAW, PLLC  
[info@cboyleslaw.com](mailto:info@cboyleslaw.com)

Peter C. Erbland  
Zachary W. Jones  
LAKE CITY LAW GROUP PLLC  
[perbland@lclattorneys.com](mailto:perbland@lclattorneys.com)  
[zjones@lclattorneys.com](mailto:zjones@lclattorneys.com)

  
\_\_\_\_\_  
Deputy Clerk