MINUTES FOR THE
CLINTON COUNTY COUNCIL MEETING
October 14, 2025

The Clinton County Council met in the Conference Room at the Frankfort/Clinton County Regional Airport, Frankfort, Indiana on October 14, 2025, at the hour of 9:00 a.m. for their regular Council meeting, pursuant in accordance with law and publication as evidence by proof of the minutes of the last meeting, and any other business that may come before it. President Alan Dunn led the Pledge of Allegiance and called the meeting to order. On call to order the following members were shown to be present or absent.

PRESENT	ABSENT
Alan Dunn	
Jeff Chynoweth	
	Mary King
Joe Mink	
Mike Hensley	
Carol Price	
	Todd Corrie

Britt Ostler, Clinton County Auditor, was present to record the proceedings of the Council.

Others present were, Deputy Auditor Janet Lloyd, Sheriff Rich Kelly, Ashley Kelly, Brett Todd, Renee Crick, Mark and Wanda Mitchell, Brett Barton, Melissa Ostler, Rick Campbell, Steven Deckard, and Liz Stitzel, as well as others mentioned in the minutes to follow.

Tim Elston was present to live-steam the meeting for remote viewing.

Upon motion of Council member Chynoweth, seconded by Council member Mink, the Minutes of the September 9/10th, 2025, Council meeting were approved 5-0.

Upon motion of Council member Chynoweth, seconded by Council member Mink, the Minutes of the September 23, 2025, Special Council meeting were approved 5-0.

COMMUNITY CORRECTIONS
Community Corrections Director Brett Barton stated there were 99 clients on electronic monitoring in September 2025 with 3 of those being juveniles and 4 on CTP. 1 person is currently on Pre-Trial Release. An on-site visit has been scheduled with the DOC.

PROBATION
Probation director Matthew Risk submitted the Probation Report for September 2025 showing detention costs were $0.00.

NEW BUSINESS
Wanda Mitchell – Mrs. Mitchell presented information regarding the matron position during her 16 years of service in that capacity and past commissary practices. This was in response to statements made by the current Matron at the September 23rd Budget Hearing. The report used by Mrs. Mitchell is attached as Exhibit A.

2026 Budget Ordinances –
President Dunn spoke regarding the 2026 budget. Health insurance costs are raising 55%.

The County will need to come up with an extra 20% to cover the projected increase. Looking back over the past 8 years, there has only been a 1% increase in cost for employees. Council member Price spoke regarding different scenarios for the medical insurance plans as well as different proposals for 2026 salaries/raises.

President Dunn and Council member Price stated that they believe giving raises of 2% across the board is the most reasonable and cost-effective solution. Any salaries/wages already set during the Budget Hearings will remain as approved.

EMS Director, Steven Deckard, and Matron Kelly asked the Council for clarification as to the status of the raises that had previously been approved at the Budget Hearings for the EMS Assistant Director position and the Sheriff Transport positions. The Council agreed that any salary that had previous been approved at the September Budget Hearings is not subject to the 2% raise.

Motion by Council member Price, second by Council member Chynoweth, to move forward with amending the submitted budgets to reflect 2% raises. Motion carried 5-0.

In order to finalize the budget numbers for Health Insurance and salaries, President Dunn has recommended to postpone adoption of the 2026 County Budget for a Special Meeting to be held on Friday, October 24, 2025 at 9:00 am. The Wild Cat Solid Waste District and Clinton County Frankfort Airport budgets will also be adopted that morning.

Upon motion by Council member Chynoweth, seconded by Council member Hensley, a motion to table the adoption of all 2026 budgets until October 24th passed 4-0. Council member Mink had to momentarily leave the room and wasn't present for this vote.

Additional Appropriations Ordinance No. CO-2025-16
President Dunn read each request and then asked for a motion for approval of the slate of Additional Appropriations. Upon motion by Council member Hensley, seconded by Council member Chynoweth, the Motion to approve the following Additional Appropriations. Motion carried 5-0:

$4992.75 request from EMA for General Fund 1000-311-02-0041 Equipment Supplies
$2001.55 request from BOH for Local Public Health Services Fund 1161-000-03-0034 Chronic Disease
$222.39 request from BOH for Local Public Health Services Fund 1161-000-04-0044 Capital Reserve
$69.97 request from Sheriff's Office for LIT Correctional Fund 1233-00-03-0001 Repairs & Maintenance
$2262.50 request from Probation Office for Adult Probation Fund 2000-000-03-0010 Drug Testing
$321.36 request from Probation Office for Adult Probation Fund 2000-000-03-0086 TRECS
$209.36 request from Surveyor Office for Drain Maint Fund 2700-000-03-0566 Raymond Stump
$1065.80 request from Circuit Court for Court Interpreter Grant Fund 4018-232-03-0001 Interpreter Costs
$25,000.00 request from Commissioners for Landfill Tipping Fees 4901-000-03-0041 Cemetery Support
$9678.52 request from Prosecutor's Office for VOCA Grant Fund 8901-000-03-0001 Supplies

Transfers for approval
Motion made by Council member Price, seconded by Council member Mink, to approve the entire slate of transfers of appropriation. Motion carried 5-0.

$106.33 transfer from General Fund Assessor 1000-008-01-0022 Level II to 1000-008-01-0019 Extra Help/PT Time
$2000.00 transfer from General Fund Veterans Affairs 1000-012-01-0019 Secretarial & PT to 1000-012-01-0012 Overtime
$5137.50 transfer from General Fund Area Plan 1000-079-01-0014 Building Insurance to 1000-079-03-0004 Contract Services
$889.82 transfer from Emergency Planning Fund 1152-000-03-0010 Training to 1152-000-04-0007 Equipment
$11,256.00 transfer from Local Public Health Services Fund 1161-000-01-0012 Admin to 1161-000-03-0030 Interim Admin
$1.00 transfer from MVH Restricted Fund 1173-000-01-0022 Operator to 1173-000-01-0027 Operator
$1.00 transfer from MVH Restricted Fund 1173-000-01-0022 Operator to 1173-000-01-0036 Operator
$1.00 transfer from MVH Restricted Fund 1173-000-01-0022 Operator to 1173-000-01-0037 Operator
$1.00 transfer from MVH Restricted Fund 1173-000-01-0022 Operator to 1173-000-01-0041 Operator
$1.00 transfer from MVH Restricted Fund 1173-000-01-0022 Operator to 1173-000-01-0042 Truck Driver
$1.00 transfer from MVH Restricted Fund 1173-000-01-0022 Operator to 1173-000-01-0045 Operator
$1.00 transfer from MVH Restricted Fund 1173-000-01-0022 Operator to 1173-000-01-0046 Truck Driver
$1.00 transfer from MVH Restricted Fund 1173-000-01-0022 Operator to 1173-000-01-0047 Truck Driver
$1500.00 request from EMS Office for EMS LIT Fund 1236-000-01-0020 Paramedics to 1236-000-01-0018 Dental Ins
$4000.00 transfer from Statewide 911 Fund 1222-000-01-0003 Part Time to 1222-000-01-0030 Overtime
$3533.00 transfer from EMS LIT Fund 1236-000-01-0020 Paramedics to 1236-000-01-0025 EMS Part-time
$3520.00 transfer from EMS LIT Fund 1236-000-01-0020 Paramedics to 1236-000-01-0032 Overtime
$20,000.00 transfer from EMS LIT Fund 1236-000-01-0020 Paramedics to 1236-000-01-0025 Part-time
$30,000.00 transfer from EMS LIT Fund 1236-000-01-0020 Paramedics to 1236-000-01-0032 Overtime
$160.00 transfer from Wild Cat Solid Waste Fund 8210-000-03-0043 Controller Bond to 8210-000-01-0037 Dental
$3000.00 transfer from Wild Cat Solid Waste Fund 8210-000-04-0021 Machinery & Equipment to 8210-000-01-0061 Bldg/Equip Repair & Maint

Transfers no approval required
$170.00 transfer from General Fund Area Plan for 1000-079-03-0084 Plan Seminars to 1000-079-03-0081 Dues & Subscriptions
$100.00 transfer from General Fund Parkview Home for 1000-622-03-0051 Repairs Bldg to 1000-622-03-0052 Rep Equipment

$3315.00 transfer from CUM Bridge Fund for 1135-000-03-0012 Bridge Inspections to 1135-000-03-0003 Professional Engineering Fee
$15,400.00 transfer from CUM Bridge Fund for 1135-000-03-0052 Misc Culver Repair to 1135-000-03-0003 Professional Engineering Fee
$200.00 transfer from MVH Unrestricted Fund for 1176-530-02-0002 Computer Supplies to 1176-530-02-0001 Office Supplies
$1800.00 transfer from EMS LIT Fund for 1236-000-02-0012 Tires to 1236-000-02-0011 Gas
$640.00 transfer from EMS LIT Fund for 1236-000-03-0010 Handtevy to 1236-000-03-0017 Maint Contracts
$71.00 transfer from EMS LIT Fund for 1236-000-03-0010 Handtevy to 1236-000-03-0017 Maint Contracts
$1160.00 transfer from EMS LIT Fund for 1236-000-03-0020 Oil Changes to 1236-000-03-0017 Maint Contracts
$1006.58 transfer from EMS LIT Fund for 1236-000-03-0020 Oil Changes to 1236-000-03-0041 Utilities
$63.12 transfer from EMS LIT Fund for 1236-000-03-0043 Electric My Medic 4 to 1236-000-03-0041 Utilities
$5000.00 transfer from EMS LIT Fund for 1236-000-03-0051 Vehicle Repair to 1236-000-03-0053 Vent & Monitor Maint
$8500.00 transfer from EMS LIT Fund for 1236-000-03-0051 Repair of Vehicles to 1236-00-03-0085 Certification Classes
$165.00 transfer from Wild Cat Solid Waste Fund for 8210-000-02-0001 Office Supplies to 8210-000-01-0036 Vision
$160.00 transfer from Wild Cat Solid Waste Fund for 8210-000-03-0043 Controller Bond to 8210-000-01-0037 Dental
$3000.00 transfer from Wild Cat Solid Waste Fund for 8210-000-04-0021 Machinery & Equipment to 8210-000-03-0061 Bldg/Equip Repair & Maint

Council reviewed the Monthly Budget Status and Financial Reports for September 2025. Council member Mink moved, seconded by Council member Hensley, to approve said reports. Motion carried 5-0.

Council Reports
Council member Price stated her and Council member King attended to the AIC conference in October; learning a great deal in each session. Due to the SB-1 changes that were adopted in July of 2025, the Council can expect to be required to take on extra Township responsibilities collaborate with the Township Trustees to help with future plans and priorities. The Towns and the City will be working with Council to make plans as well. They also learned that there will be a change in how stipends will be handled in the future. That information will be forthcoming.

LEPC training was attended by Council members Chynoweth and Hensley. This training was put on by Norfolk and Southern regarding railroad hazards. This is in preparation for next year's mock disaster.

Commissioner Reports
Commissioners Weaver spoke regarding the move from the Courthouse to the Annex. This will begin the week of October 20th – 24th.

Department Reports
Sheriff - Matron Kelly had a rebuttal regarding Mrs. Mitchell's statements. Mrs. Kelly presented 2012-2018 matron salary information she accessed off of the Gateway website.

Regarding Commissary duties, she stated that those orders are processed on site. 3 orders are done every week: bulk on-site order, warehouse order, and e-cig order. Pricing is primarily set by the marketing team at the warehouse.

Regarding some comments made about previous Work Release funds, Matron Kelly stated that historically there had been a "gentlemen's agreement" between the department and the County to split the profits 50/50. Since they were unable to find any documentation proving that such an agreement existed, the Sheriff decided not to continue the program. Documents referred to by Matron Kelly are attached as Exhibit B.

Rick Kelly spoke regarding the sheriff department and programs. Nicotine is a behavior tool and provided to inmates over age 21. Sheriff Kelly stated he does have outside employment.

EMA – Director, Renee Crick, stated that the department is working on their hazard mitigation plan. The first of two meetings will be held at the Frankfort City Police Station on November 5th. Council President Dunn asked if Council members Chynoweth and Hensley would be willing to represent the Council at said meetings. They both agreed to do so.

BOH - Melissa Hodson Ostler, interim Director, informed the Council that they Board of Health has formed a Finance Subcommittee, to meet quarterly on financial matters. The Council had been sent a report detailing this new development. Melissa Ostler, Dr Pearson and Deanna Loucks will be members along with 2-3 other appointed persons from the Board of Directors. A Charter has been approved to define the scope of its responsibilities, when they'll meet, etc.

All the Council members will be receiving an invitation to the BOH and Healthy Communities Annual Event to be held November 6th at Trinity. State Health Commissioner Lindsey Weaver will be the guest speaker.

Met with Jeffrey Thompson from Ways and Means Committee regarding the budget cuts by the State. Moving forward with the PEPH grant.

HR – Director, Sesaly Reifert, spoke regarding the 2025 salary for Health Director position. It will be $81,997, which reflects an increase to 40 hours per week (previously 35 hours).

Upon motion by Council member Price, seconded by Council member Hensley, to the increase in hours from 35 to 40 for the Health Director and set the salary for the remainder of 2025 at $81,997, carried 5-0.

EMS – Director Steven Deckard stated that his department will participate in a multi-agency Active Shooter Training event. In addition, he is optimistic that his department will report a collection of approximately $1.8 for 2025.

Council member Price asked for some clarification as to the procedure used to decide what hospital a patient gets transported to. Director Deckard stated that the Paramedics on the scene make that judgement call based on their assessment of the patient's injuries/condition. If it's determined that the IU Frankfort Hospital has adequate facilities for treatment, that is where they will be transported. If the situation is more dire, they may be transported to a trauma facility and specialized treatment hospital. They do the best they can to assess the situation with the equipment they have available to them on the scene.

Meeting adjourned at 10:07 a.m.

CLINTON COUNTY COUNCIL

Alan Dunn, President

Carol Price, Pro-tem

Mary King

Joe Mink

Mike Hensley

Jeff Chynoweth

Todd Corrie

ATTEST:

Britt A Ostler, Clinton Co Auditor

Exhibit A

GOOD MORNING! THANK YOU FOR ALLOWING ME THE TIME TO SPEAK. I APOLOGIZE IN ADVANCE FOR READING MY NOTES BUT I DON'T WANT TO MISS ANYTHING!! I AM HERE TO TODAY TO CLARIFY SOME INCORRECT INFORMATION THAT HAS BEEN PUT OUT THERE NOT ONLY OVER THE LAST FEW YEARS BUT MOST RECENTLY AT THE LAST COUNCIL BUDGET MEETING ON 9/23/25. BECAUSE ALL OF THE MEETINGS ARE CURRENTLY BROADCAST AND VIEWED ONLINE, I WAS ABLE TO WATCH. THAT MEETING SPECIFICALLY IS WHY I MADE THE DECISION TO COME BEFORE YOU AND MAKE SURE YOU AND THE PUBLIC ARE AWARE, REGARDING THE MATRON POSITION (A POSITION I HELD FOR 16 YEARS UNDER 2 DIFFERENT SHERIFF'S).

THAT WE ARE NOT THE SAME

THE DISCUSSION REGARDING THE MATRON POSITION TAKES PLACE AROUND THE 43:06 MARK WHERE IT WAS STATED THAT WANDA MITCHELL AS THE PREVIOUS MATRON EARNED THE SAME SALARY AS A DEPUTY. I HAVE GIVEN EACH OF YOU A COPY OF THE 2018 SALARY ORDINANCE AND IT CLEARLY SHOWS I WAS NOT EARNING DEPUTY PAY WHEN I LEFT THE SHERIFF'S OFFICE IN 2018, SO THAT STATEMENT IS NOT TRUE.

ANOTHER "UNTRUTH"

COMMISSARY IS PERFOMED THE SAME AS THE PREVIOUS MATRONS. THIS STATEMENT HAS BEEN MADE OFTEN OVER THE YEARS.

2003-2010 WAS MY TERM AS THE COMMISSARY MANAGER AND 2010-2018 WAS NANCY WARDS TERM AS THE COMMISSARY MANAGER. NEITHER NANCY nor I CONTRACTED WITH AN OUTSIDE COMPANY TO DO ANY PART OF COMMISARY, AS IT IS DONE THAT WAY CURRENTLY.

I PERSONALLY NEVER DOUBLED OR TRIPLED COMMISSARY PRICES. I BELIEVE IT IS TYPICALLY THE FAMILY OF THE INMATE THAT PAYS THE HIGH PRICES NOT THE INMATE AND I ALWAYS TRIED TO TAKE THAT INTO CONSIDERATION BEFORE MAKING ANY NECESSARY INCREASES.

IN ADDITION, NEITHER NANCY WARD nor I BELIEVED IN ADDING ANY FORM OF NICOTEIN FOR THE INMATES. COUNTY POLICY DOES NOT ALLOW THEIR EMPLOYEES THAT PRIVLEDGE AND THEREFORE IT JUST DIDN'T SEEM RIGHT FOR THE INMATES TO HAVE ACCESS REGARDLESS OF PROFITABILITY. ALTHOUGH THE COURTS RULED IT IS LEGAL TO SELL, THAT DOESN'T MEAN IT IS THE RIGHT THING TO DO, I NEVER FELT COMFORTABLE SELLING THEM.

NANCY WARD AND I SIGNED A CONFLICT OF INTEREST .....PERIOD

SHERIFF MITCHELL AND SHERIFF WARD BOTH OPERATED A WORK RELEASE PROGRAM; I BELIEVE THAT PROGRAM WAS ORIGINALLY SET UP BY SHERIFF HENSLEY WHERE THE INCOME WAS SPLIT 50/50 BETWEEN THE SHERIFF'S OFFICE AND THE COUNTY. DID EITHER OF THEM THEY LIKE IT? NO, THEY DID NOT, DID THEY HONOR IT, YES, THEY DID.

I MIGHT ALSO ADD THAT BOTH OF THE SHERIFF'S I WORKED UNDER WORKED SOLEY FOR THE TAXPAYERS AND DID NOT WORK ANOTHER JOB OUTSIDE THE POSITION OF SHERIFF AS THE CURRENT SHERIFF HAS.

MOST IMPORTANTLY , I THINK IT IS IMPORTANT FOR THE PUBLIC TO KNOW THE ENTIRE SHERIFF'S OFFICE WAS AUDITED BY THE INDIANA STATE BOARD OF ACCOUNTS (INCLUDING THE COMMISSARY RECORDS) THROUGHTOUT MY 16 YEARS. ANY CORRECTIONS THEY ASKED TO MAKE WERE MADE. BOTH ADMINISTRATIONS GAVE THEM FULL AND TOTAL ACCESS TO ANY INFORMATION REQUESTED AND OFTEN THEY HAD A ROOM AND A STAFF PERSON TO OBTAIN ANY DOUCEMENTS THEY REQUESTED. NO LOCK OUTS, NO ATTORNEY ESCORTS, COMPLETE COOPERATION FROM BOTH SHERIFF'S.

WE ARE NOT THE SAME

LASTLY, I DON'T THINK IT IS A SECRET THE SHERIFF'S OFFICE, COUNCIL AND COMMISSIONERS HAVE ALWAYS HAD TO WORK THROUGH MANY ISSUES. PUBLIC SAFETY IS CHALLENGING; EVERY FORMER SHERIFF WANTED THE BEST FOR ITS STAFF. I SAY THAT BECAUSE ALTHOUGH IT CAN BE CHALLENGING, AT THE END OF THE DAY COMPRIMISE AND AGREEING TO DISAGREE ARE REALLY JUST A PART OF EVERY ELECTED OFFICAL'S RESPONSIBILITY. UNFORTUNATELY, TIMING AND FINANCES SOMETIMES TRUMP WHAT A SHERIFF IS TRYING TO ACCOMPLISH DURING THEIR TENURE.

ALTHOUGH FRUSTRATING THERE IS ONLY SO MUCH MONEY TO GO AROUND. THERE WERE MANY WEIGHTED DISCUSSIONS THROUGHOUT MY 16 YEARS BUT I AM PROUD TO SAY THEY WERE NEGOTIATIOED, SETTLED AND ACCEPTED, NO LAWSUITS.....

AGAIN.....WE ARE NOT THE SAME

IN MY 16 YEARS UNDER TWO ADMINISTRATIONS,

THE SLOGAN COMMITMENT TO COMMUNITY THRU SERVICE ALWAYS TOOK PRESEDENCE OVER PERSONAL WINS OR FINANCIAL GAIN.

THANK YOU FOR YOUR TIME

	Deputy	Matron	
2012	$39,008.50	$39,009.00	County General
2013	$39,664.50	$39,665.00	County General
2014	$40,656.00	$40,656.00	County General
2015	$41,876.00	$41,876.00	County General
2016	$42,505.00	$42,505.00	County General
2017	$43,781.00	$43,781.00	Deputy Moved to LOIT
2018	$50,000.00	$45,533.00	Deputy in LOIT
2019	$51,500.00	$46,899.00	Deputy in LOIT

Exhibit B

JUSTIA

Johnson v. Wabash Cty.

391 N.E.2d 1139 (1979)

Margaret E. JOHNSON, Appellant (Plaintiff below), v. WABASH COUNTY, Indiana, Clarence Bowman, Eugene Schenkel and Glen A. Berry As the Board of Commissioners of the County of Wabash, State of Indiana, and the Board of Commissioners of the County of Wabash, State of Indiana, Appellee (Defendants below).

No. 2-577-A-160.

Court of Appeals of Indiana, Fourth District.

July 9, 1979.

*1140 John R. Johnston, Wabash, for appellant.

*1141 Larry C. Thrush, Wabash, for appellee.

MILLER, Judge.

Plaintiff-appellant Margaret Johnson (Johnson) brought an action against Defendant-appellee Wabash County (County) to recover unpaid salary allegedly owed her for services rendered as prison matron from and including January 1, 1967, through December 31, 1974. The County filed a motion for summary judgment which was granted by the trial court.

We reverse.

In 1967, Johnson was appointed prison matron of the County by the Sheriff (her husband) in accordance with IC 11-5-4-6[1] and received an annual salary as established by the Wabash County Council.

On November 12, 1975, Johnson filed a complaint seeking judgment in the amount of $37,960.00 against the County for back salary plus attorney fees. This complaint was amended on December 30, 1975, to demand a total amount of $75,920.00 ($28,470.00 for back salary, $18,980.00 for attorney fees, and $28,470.00 for "liquidated damages"). She claimed she was entitled to be paid a salary equivalent to the salary paid to other deputy sheriffs and police officers in accordance with IC 11-5-4-3 which, prior to its amendment in 1972, provided in relevant part:

"The Prison Matron and her assistant or assistants shall be paid such compensation or salaries as other deputy Sheriffs and police officers are paid for like work." (our emphasis)

This provision was amended effective February 14, 1972 to read as follows:

"The Prison Matron and her assistant or assistants shall be paid such compensation or salaries as other deputy Sheriffs and police officers are paid."

In her complaint, Johnson set forth the annual salaries paid to her as compared to the compensation paid to the deputy Sheriffs (allegedly for like work) as follows:

"Year	Annual Salary Paid To Plaintiff	Annual Salary Paid to Deputy Sheriffs For Like Work
1967	$2,040.00	$5,620.00
1968	2,700.00	5,400.00
1969	2,700.00	6,120.00
1970	2,900.00	6,500.00
1971	3,190.00	6,800.00
1972	3,690.00	7,400.00
1973	3,800.00	7,700.00
1974	4,000.00	7,950.00"

The County filed a motion for jury trial together with its answer on February 2, 1976, wherein it admitted that Johnson's record of her salary was correct and acknowledged that the salaries of the lowest paid deputy sheriff for the years 1972-1973 were accurate, but denied that the salary paid to such deputy sheriffs was for like work as that of the prison matron for the years prior to 1972. Numerous separate defenses were asserted in the answer: first, that the portion of Johnson's claim accruing more than five years prior to the filing of her complaint was barred by the statute of limitations pursuant to IC 34-1-2-2[2]; second, that Johnson waived her claim for additional compensation by accepting the terms

of employment and salary paid; third, that her claim was barred in equity by laches; fourth, that she did not perform "like work" as required in the pre-1972 provision of IC 11-5-4-3; fifth, that the position of prison matron was a part-time job and therefore not subject to a salary comparable to a full-time deputy sheriff position; and finally, that attorney fees and liquidated damages were not recoverable. The County's answer also asserted as a set-off that Johnson lived in a dwelling furnished *1142 by the County free of any rent or utility charges during the term of her employment and that this constituted additional compensation since none of the deputy sheriffs or police officers had been provided with living quarters or free utilities

On August 12, 1976, the County filed its motion for summary judgment together with affidavits and supporting memorandum. In its memorandum it asserted that the statutory requirement had been met with respect to Johnson's salary since, during the entire period of Johnson's employment, the deputy sheriffs of Wabash County were paid a salary pursuant to the guidelines established by IC XX-X-XX-X, which provides in pertinent part:

"In all counties having a population of not less than twenty-five thousand and one [25,001] and not more than forty thousand [40,000] according to the last preceding United States census, the salary of each of said deputies and other assistants shall not be less than two hundred and twenty dollars [$220] per month... ."

Thus, County argued, even if Johnson were considered to be a full-time employee and entitled to a salary commensurate with that payable to full-time deputy sheriffs, the County would have been obligated to pay her only the statutory minimum of $2,640.00 per year, or a total of $21,120.00 during her eight years of employment. In fact, Johnson was paid a total salary for eight years of $25,020.00.

The trial court denied Johnson's motion to strike the County's request for trial by jury and granted the County's motion for summary judgment. In response to Johnson's motion to correct errors, the trial court's judgment was corrected as follows to set forth reasons for granting the summary judgment:

"FINDINGS AND ORDER This matter came on for hearing on the 5th day of October, 1976, upon the Defendant's Motion for Summary Judgment. The Court, having heard the arguments of counsel for each of the parties, now finds: 1. That from January 1, 1967 through December 31, 1974, the Defendant would have been obligated to pay a full time prison matron a salary in accordance with the Legislative Directives enumerated in Indiana Code 17-3-71-2; 2. That during the entire eight (8) year period of Plaintiff's employment, Wabash County, Indiana had a population of not less than 25,001 and not more than

40,000 persons; 3. That the minimum salary that Defendant was legally obligated to pay to the Plaintiff, if Plaintiff was a full time employee, was the monthly sum of Two Hundred Twenty Dollars ($220.00); 4. That in all instances the monthly salary paid to the Plaintiff by the Defendant exceeded the statutory minimum prescribed by Indiana Code 17-3-71-2. IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that there is no genuine issue of material fact to be decided in this cause, therefore, the Court now grants the Defendant's Motion for Summary Judgment and enters judgment for Defendants."

Johnson presents the following issues for our review:

I. Whether the trial court's entry of summary judgment based on its application of IC 11-5-4-3 and IC XX-X-XX-X was contrary to law in the trial court's application of the appropriate statutes and in its finding that there exists no genuine issue of material fact. II. Whether the trial court erred by not granting partial summary judgment for Johnson. III. Whether the trial court erred in granting the County's request for trial by jury. I.

When reviewing the granting of a summary judgment this Court must determine if any genuine issue of fact exists and whether the law was correctly applied by the trial court. Ind. Rules of Procedure, Trial Rule 56; Doe v. Barnett (1969), 145 Ind. App. 542, 251 N.E.2d 688. We first address whether the trial court correctly applied the law.

*1143 Johnson contends that the trial court erred in its construction of IC 11-5-4-3. Specifically she argues that the trial court erred when it found that the minimum salary requirements set in IC XX-X-XX-X had a bearing upon IC 11-5-4-3. The County argues that the statutory minimum requirement is directly applicable in the establishment of a prison matron's salary.

The controlling statute in this case is IC 11-5-4-3, which, prior to the 1972 Amendment, required that prison matrons be paid a salary equal to the salary other deputy sheriffs and police officers were paid for like work. The 1972 amendment deleted the qualifying words "for like work," and now requires that prison matrons receive the same compensation as other deputies and police officers are paid, regardless of their respective duties.

When construing legislation, this Court must reasonably interpret the statutory language to discover the legislative intent and goal. Skirvin v. Review Board of the Indiana Employment Security Division (1976), Ind. App., 355 N.E.2d 425. It is also a fundamental rule of statutory construction that a statute clear and unambiguous on its face need not and cannot be interpreted by a court, Indiana State Board of Tax Commissioners v. Holthouse

Realty Corp. (1976), Ind. App., 352 N.E.2d 535; and, in the absence of an expressed differing legislative intent, words in statutes are given their plain, ordinary meaning. Indiana Department of State Revenue v. Cable Brazil, Inc. (1978), Ind. App., 380 N.E.2d 555. Furthermore, there is a presumption that a statutory amendment was intended to change the existing law. Sekerez v. Youngstown Sheet & Tube Co. (1975), Ind. App., 337 N.E.2d 521.

Applying these general rules of statutory construction, we conclude the plain meaning of IC 11-5-4-3 to be that a prison matron is entitled to be paid on the same salary scale as that established locally for, and paid to, deputy sheriffs and police officers. Additionally, it must be shown that the duties performed by an employee in the capacity of prison matron prior to the 1972 amendment were "like work" compared to that of deputies and police officers at that time.

IC 11-5-4-3, makes no reference to IC XX-X-XX-X, nor do we find that the legislature intended it to do so. The statute establishing the prison matron's powers, duties and compensation, IC 11-5-4-3, was enacted in 1901, while the statute setting the minimum salaries for deputy sheriffs was not enacted until 1933. Consequently the legislature did not have a minimum required salary in mind when the statute was enacted.

The trial court, in finding that IC XX-X-XX-X directed the minimum salary that the County was legally required to pay Johnson, may have replied on the holding in Cunningham v. Board of County Commissioners (1972), 153 Ind. App. 217, 286 N.E.2d 671. In that case the plaintiff, a prison matron, brought suit against the county for services rendered. She argued that, in accordance with IC 11-5-4-3, she was entitled to the same salary as the deputy sheriff duly appointed and acting, which salary was, pursuant to IC XX-X-XX-X, a minimum of $150 per month in a county with a population of less than 10,000. The court held that the plaintiff, having failed to qualify under IC 11-5-4-3 by proving that she performed "like work" of the deputy, was precluded from any recovery. However, since the prison matron in that case claimed only the minimum statutory salary, this Court did not have the opportunity to reach the question that we are confronted with herein, that is, whether IC XX-X-XX-X dictates the minimum salary to which Johnson would have been entitled had she met her burden of proof as to "like work."

IC XX-X-XX-X sets forth the minimum salary payable to full-time non-probationary deputies and other assistants; however, it does not set the salary scale or fix the minimum salary to be paid such employees. The salary scale and salaries of full or part-time deputies or other assistants to the sheriff are fixed by the county council pursuant to the authority delegated to it by IC XX-X-XX-X. It is within that agency's discretion to determine the

amount of such salaries, so long as it abides by the minimum limit prescribed in that statute. Thus, *1144 in the final analysis, the county council, not the minimum salary statute, determines and fixes these salaries. 1947 Op.Ind.Att'y Gen. No. 134.[3]

Thus, the trial court did not appropriately apply the statutory law when it decided that Johnson received adequate compensation based on the minimum legally required salary during the entire term of her employment.

Secondly, Johnson contends that there exist genuine issues of material fact reflected in the pleadings, affidavits and interrogatories which prohibit the entry of summary judgment in this case. In response, the County argues that because the salary received by Johnson was legally adequate, there do not exist any genuine issues of material fact.

In its determination of whether a factual controversy exists, the trial court must resolve all doubts as to the existence of a genuine issue as to any material fact against the proponent of the motion for summary judgment and all facts properly asserted by the non-movant in affidavits or by way of answers to interrogatories or admissions must be taken as true. Podgorny v. Great Central Insurance Co. (1974), 160 Ind. App. 244, 311 N.E.2d 640. An issue of fact is material where its resolution is decisive of the action or of a relevant secondary issue. Doe, supra.

We have examined the parties' conflicting affidavits and it is apparent that controversy remains on several critical issues, that is, whether the work performed by Johnson was indeed "like work" such as carried out by other deputies; whether the residence and utilities allegedly provided by the County to Johnson, but to no other deputies, constituted additional compensation; whether the position of prison matron held by Johnson was a full-time or part-time position; and whether the claim is barred by waiver or laches.

Resolution of these issues, containing questions of fact, is necessary for the ultimate resolution of the action, being a prerequisite to determination of the compensation due Johnson under IC 11-5-4-3.

The judge may not use summary judgment procedure to weigh the evidence to determine where the preponderance lies in advance of its being presented. Letson v. Lowmaster (1976), Ind. App., 341 N.E.2d 785. Thus, the court's decision granting summary judgment in the County's favor was incorrect both in its application of the law and in its determination that there remained "no genuine issue of material fact."

II.

Johnson asserts that she was entitled to a partial summary judgment, pursuant to Ind. Rules of Procedure, Trial Rule 56(B), for a deficiency in the compensation she received as prison matron for Wabash County. The County argues that the trial court correctly refused to grant any judgment to Johnson.

Initially, we must point out that we may consider only Johnson's demand for partial summary judgment for the alleged deficiency in her salary for the years 1972 and 1973 because she alleged no further error in her motion to correct errors. Ind. Rules of Procedure, Trial Rule 59(G); Adkins v. Elvard (1973), 155 Ind. App. 672, 294 N.E.2d 160. These were the years the County, in its Answer, admitted the amount of compensation for the lowest paid deputy sheriff. We acknowledge that for most of 1972[4] and all of 1973 it was unnecessary for the prison matron to prove she performed *1145 "like work" as that of a deputy sheriff in order to receive equal pay. Thus, absent the validity of any of the issues raised by the County's various defenses and set-off, Johnson's argument has merit. However, as noted in our discussion under Issue I, there remain a number of genuine issues of material fact in controversy for those years, and, therefore, the trial court did not err in failing to grant the partial summary judgment requested by Johnson in her Motion to Correct Errors.

III.

As her final allegation of error, Johnson contends the trial court erroneously denied her Motion to Strike the County's request for jury trial. The following is a chronology of the proceedings which we feel pertinent to this issue:

November 12, 1975	Johnson files Complaint and motion for change of venue from county.
November 12, 1975	County served. Counsel for County files appearance.
November 20, 1975	Cause venued to Miami County, Indiana.
December 30, 1975	Johnson files her amended Complaint with certificate of service by mail.
February 2, 1976	County files Answer and request for jury trial.
February 9, 1976	Johnson files motion to strike defendants' request for trial

	by jury.
July 14, 1976	Hearing on Johnson's motion to strike defendants' request for trial by jury set for August 12, 1976.
August 12, 1976	County files motion for summary judgment.
August 12, 1976	Argument on Johnson's motion to strike defendants' request for trial by jury held and matter taken under advisement.
October 22, 1976	Court enters Order as follows: "THE COURT having taken this matter under advisement now denies Plaintiff Motion to Strike Defendants' Request For Trial By Jury. THE COURT now finds that there is no genuine issue as to any material facts and Defendants are entitled to judgment as a matter of law. THEREFORE, the Court grants Defendants' Motion For Summary Judgment and enters judgment for Defendants."[5]

Ind. Rules of Procedure, Trial Rule 38 provides in pertinent parts:

"(B) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by filing with the court and serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than ten days after the first responsive pleading to the complaint, or to a counterclaim, cross-claim or other claim if one properly is pleaded; and if no responsive pleading is filed or required, within ten days after the time such pleading otherwise would have been required. Such demand is sufficient if indorsed upon a pleading of a party filed within such time. * * * * * * (D) Waiver. The failure of a party to appear at the trial, and the failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(D) constitute waiver by

him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the other party or parties."

Johnson now asserts, as she did in her motion to strike below, that the County's answer was due within twenty days after November 12, 1975,[6] the date the complaint *1146 was filed and served on the County and on which counsel for County filed his appearance. Thus, according to Johnson, the jury request of February 2, 1976 was not filed within ten days after the answer was required and the County thereby waived its right to trial by jury. On the other hand the County contends that, since its answer was eventually filed,[7] it was entitled to file its request for jury trial within ten days thereafter, which it did.

It is our opinion that in cases like the one before us, where a response is required and not filed within the proper time and, further, no enlargement of time to respond has been granted either by permission of the trial court or by operation of a provision in our Rules[8], the Defendant's time for filing a jury request expires ten days after the date on which his answer should have been filed.[9] In this case, the County's time for filing such request terminated on December 12, 1975 or thirty days after personal service of the complaint and the appearance of County's attorney. In so construing TR 38 we are mindful of the language in Ind. Rules of Procedure, Trial Rule 1 which provides that our Rules "shall be construed to secure the just, speedy and inexpensive determination of every action". Further, "[t]he rules were not meant to confuse the diligent or to trap the unwary and, thus, they are best interpreted and applied in a straightforward manner". In re Brown (1979), Ind. App., 387 N.E.2d 72.

The critical language in TR 38,

"and if no responsive pleading is filed or required, within ten [10] days after the time such pleading otherwise would have been required". (Our emphasis)

obviously refers to causes where responsive pleadings are required as well as those in which they are not. If the Rule had been intended to apply only to those causes where a responsive pleading was not required the Rule would read:

"and if no responsive pleading is required, within ten [10] days after the time such pleading otherwise would have been required".

In Clark County State Bank v. Bennett (1975), Ind. App., 336 N.E.2d 663 the defendant filed its answer after receiving a three day notice of a default judgment under Ind. Rules of Procedure, Trial Rule 55(B) but before the default judgment was entered. This Court held that the time period in which to answer or otherwise respond to a complaint is not

committed to the discretion of the defending party. Thus, the defendant's answer was delinquent and, therefore, could not have been filed without the permission of the trial court in the exercise of its discretion under the provisions of TR 6(B) which permits an act to be done after the expiration of the specified time "where the failure to act was the result of excusable neglect."

We see no reason why a defendant who is delinquent in filing his answer and jury request should be granted the privilege of reviving his right to jury trial by the subsequent filing of an untimely answer. Our conclusion is harmonious with the decision in Buher v. Johnson (1973), 155 Ind. App. 693, 294 N.E.2d 625, a paternity action, *1147 where the issues were closed by operation of law and the defendant was not required to file an answer. The Court held that, although a responsive pleading had been filed, it was five months late and thus the right to a jury trial had been waived. The Court based its opinion on the fact that a responsive pleading was not required and the request was not filed within ten days after the time such response otherwise would have been required, stating as follows at p. 629 of 294 N.E.2d:

"Defendant-appellant urges that it is extremely important to note under Rule TR. 38(B) `... if no responsive pleading is filed or required ...' a person must file a demand for jury trial within ten days after the time such pleading otherwise would have been required. He further urges that no responsive pleading was required in his case and with that we agree. However, his contention that since one was filed that Rule TR. 38(B)'s alternative requirement as to demand for jury trial applied is not correct and in our opinion under the cases hereinabove referred to the defendant-appellant had the right to file a request for jury trial but has waived his right to a jury trial by not having filed his request for such within ten [10] days after the time such pleading otherwise would have been required. Rule TR. 38(B) limits the time within which a party may request a jury trial. It is not consistent with the spirit of this Rule to allow a defendant to wait five and one-half months, and file a useless answer, simply for the purpose of giving efficiency to an otherwise untimely motion for a jury trial. Thus, if a party wishes to file a responsive pleading in an action where such pleading is not required, he must, nevertheless, follow the guidelines set down in the Rules and file such pleading within the time it otherwise would have been required."

See also Houchin v. Wood (1974), 162 Ind. App. 76, 317 N.E.2d 911.

Although the court erred in failing to strike the County's jury request, we note that, on remand, the question of whether a jury is appropriate might still arise. First, the trial court may, in its discretion, utilize an advisory jury pursuant to Ind. Rules of Procedure, Trial Rule 39(B). Second, it is our opinion that the trial court has the discretion to grant a

motion by the County, if one is filed, permitting a jury trial under the "excusable neglect" provisions of TR 6(B) which provide:

"(B) Enlargement. When an act is required or allowed to be done at or within a specified time by these rules, the court may at any time for cause shown * * * * * * (2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but, the court may not extend the time for taking any action for judgment on the evidence under Rule 50(A), amendment of findings and judgment under Rule 52(B), to correct errors under Rule 59(C), or to obtain relief from final judgment under Rule 60(B), except to the extent and under the provisions stated in those rules."

A belated jury request clearly falls within the language of this Rule. Certainly TR 38 is not among those Rules excluded from its provisions. Further, Fed.R.Civ.P. 38 and Fed.R.Civ.P. 6(b) contain substantially the same language as our TR 38 and TR 6(B). In Federal practice it is settled that a failure to make timely demand for jury trial can be excused under Fed.R.Civ.P. 6(b). Wright & Miller, Federal Practice and Procedures, Civil § 1166.

This cause is reversed and remanded to the trial court for further proceedings not inconsistent with this opinion.

CHIPMAN, P.J., concurs.

YOUNG, J., concurs in result without opinion.

NOTES

[1] This section provides: "Appointment. The prison matron and her assistants shall be appointed by the sheriffs in the several counties as provided for in this chapter."

[2] IC 34-1-2-2. "... All actions against a sheriff, or other public officer, or against such officer and his sureties on a public bond, growing out of a liability incurred by doing an act in an official capacity, or by the omission of an official duty, within five years; but an action may be brought against the officer or his legal representatives, for money collected in an official capacity, and not paid over, at any time within six years... ." The case at bar is an action against the County plus the named officers in their capacity as the executive body of the County and not as individuals. The statute is, therefore, inapplicable.

[3] Since the effective date of Acts 1967, chapter 348, § 1, (IC 11-5-4-1) the County has had no power to fix a salary for the prison matron without regard to salaries paid Deputy

Sheriffs and police officers. Although we do not need to decide, it would appear that both the 1955 and 1967 amendments to IC 11-5-4-1 empowered the board of county commissioners to fix the prison matron salary, subject to the county council's approval, notwithstanding contrary law (vis: IC XX-X-XX-X). However, a 1967 amendment restricted the application of this provision to counties having a population less than 20,000, and in 1972, P.L. 91, § 1, p. 536 deleted the salary provision entirely.

[4] As noted earlier, the amendment to IC 11-5-4-3 deleting the language "for like work" was effective February 14, 1972.

[5] The portion of this order granting summary judgment was amended on January 12, 1977 to include the trial court's reasoning.

[6] Ind. Rules of Procedure, Trial Rule 6(C) provides: "A responsive pleading required under these rules, shall be served within twenty days after service of the prior pleading. * * *"

[7] The County made no request to the court for an enlargement of time in which to file its answer.

[8] For example under TR 6(B) the court can extend time for answering if motion is made prior to the expiration of time for filing the pleading or after expiration of time for excusable neglect. Under TR 6(C) an extension of time is granted for filing a responsive pleading until after action is taken on a motion to dismiss filed pursuant to Ind. Rules of Procedure, Trial Rule 12(B). Of course the mailing of a pleading gives the responding party an additional three days for its response. TR 6(E).

[9] The filing of a jury request by a defendant within the proper time, although an answer has not been filed, is not a futile act. He could, thereby, preserve his right to a jury trial as provided in Ind. Rules of Procedure, Trial Rule 55(B), which reads in pertinent part: "If, in order to enable the court to enter [default] judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearing or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required." See Kirk v. Harris (1977), Ind. App., 364 N.E.2d 145.