# TOWNSHIP BULLETIN AND UNIFORM COMPLIANCE GUIDELINES ISSUED BY STATE BOARD OF ACCOUNTS

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#### **ITEMS TO REMEMBER**

<u>JUNE</u>						
June	1:	Prove all ledgers for the prior month.				
		On or before June 1 and December 1 of each year (or more frequently if the county legislative body adopts an ordinance requiring additional certifications) the Trustee shall certify a list of the name and address of each person who has money due from the Township to the County Treasurer. [IC 6-1.1-22-14]				
June	20:	If your monthly average tax withheld is more than \$1,000, the 20th is the last day to report and make payment for the balance of State and County Income Tax withheld in the prior month to Indiana Department of Revenue.				
June	30:	If your monthly average tax withheld is \$1,000 or less, the 30th is the last day to report and make payment for the balance of State and County Income Tax withheld in the prior month to Indiana Department of Revenue.				
		All local investment officers shall reconcile at least monthly the balance of public funds, as disclosed by the records of the local officers, with the balance statements provided by the respective depositories. [IC 5-13-6-1(e)]				
		<u>JULY</u>				
July	1:	Prove all ledgers for the prior month.				
July	2:	Deadline for State Budget Agency to provide Assessed Value Growth Quotient to Townships. [IC 6-1.1-18.5-2]				
July	4:	Independence Day – Legal Holiday [IC 1-1-9-1]				
July	16:	Department of Local Government Finance will provide each Township an estimate of the maximum permissible property tax levy for 2018, along with guidance on calculating allowable adjustments to the maximum levy. [IC 6-1.1-18.5-24]				
July	20:	If your monthly average tax withheld is more than \$1,000, the 20th is the last day to report and make payment for the balance of State and County Income Tax withheld in the prior month to Indiana Department of Revenue.				
July	30:	If your monthly average tax withheld is \$1,000 or less, the 30th is the last day to report and make payment for the balance of State and County Income Tax withheld in the prior month to Indiana Department of Revenue.				
July	31:	Last day to file Employer's Quarterly Federal Tax Return, Form 941, with the Internal Revenue Service for payment of federal tax withheld.				
		Last day to file report with the Indiana Department of Workforce Development for the quarter ending June 30.				

All local investment officers shall reconcile at least monthly the balance of public funds as disclosed by the records of the local officers, with the balance statements provided by the respective depositories. [IC 5-13-6-1]

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		JULY (Continued)
July	31:	Department of Local Government Finance will provide to each Township that levies a property tax an estimate of the amount by the property tax distributions will be reduced in the ensuing year due to circuit breaker credits. [IC 6-1.1-20.6-11.1]
		<u>AUGUST</u>
August	1:	Prove all ledgers for the prior month.
		Post a verified statement showing the indebtedness of the Township in detail and giving the number and total amount of outstanding orders, warrants, and accounts. [IC 36-6-4-10]
		At their first meeting in August, the county fiscal body shall review the estimated property tax levy limits and the estimated reductions due to circuit breakers for each Township. The county fiscal body will either prepare and distribute a written recommendation for the taxing units or the county auditor will distribute the minutes of the meeting to all Townships after the minutes are approved by the fiscal body. [IC 6-1.1-17-3.6]
August	20:	If your monthly average tax withheld is more than \$1,000, the 20th is the last day to report and make payment for the balance of State and County Income Tax withheld in the prior month to Indiana Department of Revenue.
August	30:	If your monthly average tax withheld is \$1,000 or less, the 30th is the last day to report and make payment for the balance of State and County Income Tax withheld in the prior month to Indiana Department of Revenue.
August	31:	All local investment officers shall reconcile at least monthly the balance of public funds as disclosed by the records of the local officers, with the balance statements

### **STATEMENT OF ENGAGEMENT COST**

provided by the respective depositories. [IC 5-13-6-1]

At the end of an audit engagement the State Board of Accounts sends a notice of Statement of Engagement Cost. This statement details a summary of the engagement including the number of days spent on the audit, the daily/hourly rate, and any report processing fees. We would like to point out that this statement is not an invoice that is to be paid. An invoice for payment of these audit costs will be sent to your County for payment in accordance with IC 5-11-4. You should not send any payments for the engagement costs because this amount will be taken out of the school's next distribution from the County. Please keep this statement as documentation.

When your next distribution does arrive, the amount will be reduced by the engagement cost noted in this Statement. We have decided to not take exception to schools using any of the property tax funds to cover State Board of Accounts audit costs. We are also not taking exception to the General fund reimbursing the property tax fund in which it was withheld by the County.

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#### REPORT OF MISAPPROPRIATION

Indiana Code 5-11-1-27(I) requires a public officer who has actual knowledge or reasonable cause to believe that there has been a misappropriation of public funds or assets to immediately send a written notice to the state board of accounts and the prosecuting attorney.

Indiana Code 5-11-1-27(I) states:

- (I) A public officer who has actual knowledge of or reasonable cause to believe that there has been a misappropriation of public funds or assets of the public office, including:
  - (1) information obtained as a result of a police report;
  - (2) an internal audit finding; or
  - (3) another source indicating that a misappropriation has occurred;

shall immediately send written notice of the misappropriation to the state board of accounts and the prosecuting attorney serving in the area governed by the political subdivision.

The State Examiner Directive 2015-6 also addresses this statute.

The policy must also consider Ind. Code § 5-11-1-27(l), which requires public officials who have actual knowledge of or reasonable cause to believe that there has been a misappropriation of public funds to immediately send written notice of the misappropriation to the State Board of Accounts and the prosecuting attorney. There is no materiality threshold applicable to Ind. Code § 5-11-1-27(l). Thus, whenever a political subdivision has actual knowledge or is reasonably certain that a misappropriation of public funds has occurred (regardless of the dollar amount), the political subdivision must send written notice of the misappropriation to the State Board of Accounts and the local prosecuting attorney. Misappropriation occurs when an employee or in-house contractor of the political subdivision wrongly takes or embezzles public funds. When there is a known misappropriation or embezzlement of public funds by an internal actor, materiality is irrelevant. Indiana law requires the political subdivision to report the activity to the State Board of Accounts and the local prosecutor. Ind. Code § 5-11-1-27(l).

We are finding that the requirements of this statute are not being followed consistently. If a public official fails to report the misappropriation of funds or assets in a timely manner, this will result in a finding in the audit report. This may also result in additional audit costs. Also, be aware that reporting the misappropriation to a law enforcement agency does not fulfill the requirements of the statute. Even when you have notified law enforcement officials, you must still notify the board of accounts and the prosecutor. If there are any concerns on the response the board of accounts will take after a report is received or how they will liaison with the law enforcement investigation, you can contact our Director of Special Investigations, Mark Mahon at (317) 232-2513 or <a href="mmahon@soba.in.gov">mmahon@soba.in.gov</a>.

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#### **2018 TOWNSHIP TRUSTEE MEETINGS FEEDBACK**

A survey has been sent out to the attendees of the State Board of Accounts' Meetings for Township Trustees that were held during January and February earlier this year. We are looking for feedback to improve these meetings and we would like to hear from you. If you did not attend or did not receive our survey, please feel free to email your responses to the questions below to <a href="mailto:schools.townships@sboa.in.gov">schools.townships@sboa.in.gov</a>.

- 1. How satisfied were you with the conference? Please address the topics discussed, locations, time of the year, and the speakers' effectiveness.
- 2. In your opinion, did the conference meet its objectives, Our objectives included providing information on compliance and financial reporting requirements, answering questions, and providing financial guidance.
- 3. How well was the conference structured? Was the timetable of presentations and the facilities to your liking and if not, why?
- 4. Which topics would you like to see covered at future conferences?

# PAYMENT OF EMPLOYEES DURING ABSENCE FROM WORK ON ACCOUNT OF COMPENSABLE INJURY

Official Opinion of the Indiana Attorney General Number 134 of 1945, established guidelines to be observed in paying school teachers in instances where an absence from work was because of circumstances under which the teacher received compensation benefits through the provisions of the Workmen's Compensation Act (Worker's Compensation Act). Clarification was made in the Opinion, that a teacher who received benefits under the Workmen's Compensation Act (Worker's Compensation Act) while absent from work, would be entitled to receive from a school corporation only the difference between the amount received from Workmen's Compensation Act (Worker's Compensation Act) and the full benefits provided by law allowing teachers to be absent without loss of pay for a stated number of days; the laws considered in the Opinion do not authorize double payment for the same injury.

Official Opinion Number 17 of 1975 supports the prior Opinion in that while a teacher is entitled to each earned sick leave day for actual sickness or injury, in the event a teacher also receives Workmen's Compensation (Worker's Compensation) payments during the same time frame as receiving sick leave, an adjustment must be made so that the combined earned sick leave days and Workmen's Compensation (Worker's Compensation) payments do not exceed that teacher's normal salary for the same time frame.

Applying the aforementioned to townships, we are of the audit position that if an employee is off work and receiving payments from a township for sick days, the employee should either sign the Worker's Compensation payment over to a township or receive from a township the difference between the employee's daily rate and the amount received from Worker's Compensation.

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#### **ELECTION BOARD AND JURY DUTY**

Jury duty is considered to be a civic responsibility which should not be evaded by public employees.

IC 33-37-10-1 states in part "(a) A juror of a circuit, superior, county, or probate court or a member of a grand jury is entitled to the sum of the following: (1) Except as provided in subsection (f), an amount for mileage at the mileage rate paid to state officers and employees for each mile necessarily traveled to and from the court. (2) Payment at the rate of: (A) fifteen dollars (\$15) for each day the juror is in actual attendance in court until the jury is impaneled; and (B) forty dollars (\$40) for each day the juror is in actual attendance after impaneling and until the jury is discharged. (b) A county fiscal body may adopt an ordinance to pay from county funds a supplemental fee in addition to the fees prescribed by subsection (a)(2). (c) A juror of a city or town court is entitled to the sum of the following: (1) Except as provided in subsection (f), an amount for mileage at the mileage rate paid to state officers and employees for each mile necessarily traveled to and from the court. (2) Fifteen dollars (\$15) per day while the juror is in actual attendance. (d) A city or town fiscal body may adopt an ordinance to pay from city or town funds a supplemental fee in addition to the fee prescribed by subsection (c)(2)."

We are of the audit position that a township may pay an employee the difference between the amount of jury duty pay per day to that employee and the amount of a regular day's pay for that employee as if the employee had worked a regular day (no overtime). The following audit position applies to all employees for which the daily rate is greater than the daily amount paid for jury duty.

- 1. A township employee could receive the full amount of regular salary and not claim compensation for jury duty.
- 2. A township employee could receive the compensation for jury duty and said amount could be deducted from the regular salary.
- 3. A township employee could receive the full amount of regular salary (no overtime) and turn over the warrant for serving on the jury to your office to be receipted into the fund from which the regular salary is paid.

The State of Indiana mileage rate is currently thirty-eight cents (\$.38) per mile. Travel reimbursement belongs to the employee without being considered compensation for purposes of our audit position. We suggest that the trustee and the township board adopt a policy establishing rules and regulations for jury duty by township employees.

#### **GROUP INSURANCE - DEPENDENTS OF EMPLOYEES**

Official Opinion 50 of the Attorney General of the State of Indiana, issued in 1965, concluded that there is no statutory authority for a governmental unit to purchase group hospitalization insurance coverage for dependents of employees. However, the Attorney General issued Official Opinion 44 (1966) as a clarification of the 1965 opinion.

The 1966 opinion concluded that a governmental unit may contribute toward the insurance of legal dependents of the employee. By "legal dependents" the opinion refers to those dependents for whom the employee is required by law to pay their medical expenses, which would include the employee's wife and minor dependent children. However, not included are those persons, whether or not related, for whom the employee voluntarily assumes liability for such expenses or insurance coverage. IC 5-10-8-2.6(c) states in part "A public employer may pay a part of the cost of group insurance . . . " (Our Emphasis) Therefore, a township may not pay the entire cost of such insurance.

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### PURCHASE OF FIREFIGHTING APPARATUS AND EQUIPMENT INSTALLMENT CONTRACTS

#### INSTALLMENT CONTRACTS

IC 36-8-13-5 states, "After a sufficient appropriation has been made and approved and is available for the purchase of firefighting apparatus and equipment, including housing, the township executive, with the approval of the township legislative body, may purchase it for the township on an installment conditional sale or mortgage contract running for a period not exceeding:

- (1) six (6) years; or
- (2) fifteen (15) years for a township that:
  - (A) has a total assessed value of sixty million dollars (\$60,000,000) or less, as determined by the department of local government finance; and
  - (B) is purchasing the firefighting equipment with funding from the:
    - (i) state or its instrumentalities; or
    - (ii) federal government or its instrumentalities.

The purchase shall be amortized in equal or approximately equal installments payable on January 1 and July 1 each year."

#### LOANS - TAX LEVY

IC 36-8-13-6 states, "(a) Subject to section 6.5 of this chapter, the executive and legislative body, on behalf of the township, may also borrow the necessary money from a financial institution in Indiana to make the purchase on the same terms. They shall, on behalf of the township, execute and deliver to the institution the negotiable note or bond of the township for the sum borrowed. The note or bond must bear interest, with both principal and interest payable in equal or approximately equal installments on January 1 and July 1 each year over a period not exceeding six (6) years. (b) The first installment of principal and interest on a contract, chattel mortgage, note, or bond is due on the next January 1 or July 1 following the first tax collection for which it is possible for the township to levy a tax. The executive and legislative body shall appropriate and levy a tax each year sufficient to pay the obligation according to its terms. An obligation of the township executed under this chapter is a valid and binding obligation of the township, notwithstanding any tax limitation, debt limitation, bonding, borrowing, or other statute to the contrary."

IC 36-8-13-6.5 states, "(a) If the executive and the legislative body determine that money should be borrowed under section 6 of this chapter, not less than ten (10) taxpayers in the township who disagree with the determination may file a petition in the office of the county auditor not more than thirty (30) days after notice of the determination is given. The petition must state the taxpayers' objections and the reasons why the taxpayers believe the borrowing to be unnecessary or unwise.

- (b) The county auditor shall immediately certify a copy of the petition, together with other data necessary to present the questions involved, to the department of local government finance. Upon receipt of the certified petition and other data, the department of local government finance shall fix a time and place for the hearing of the matter. The hearing shall be held not less than five (5) and not more than thirty (30) days after the receipt of the certified documents.
- (c) The hearing shall be held in the county where the petition arose.
- (d) Notice of the hearing shall be given by the department of local government finance to the township and to the first ten (10) taxpayer petitioners listed on the petition by letter. The letter shall be sent to the first ten (10) taxpayer petitioners at the taxpayer's usual place of residence at least five (5) days before the date of the hearing.

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#### **PURCHASE OF FIREFIGHTING APPARATUS AND EQUIPMENT**

(Continued)

(e) A: (1) taxpayer who signed a petition filed under subsection (a); or (2) township against which a petition under subsection (a) is filed; may petition for judicial review of the final determination of the department of local government finance under subsection (a). The petition must be filed in the tax court not more than forty-five (45) days after the date of the department's final determination."

#### **PROCEDURE**

IC 36-8-13-7 states, "(a) All purchases of firefighting apparatus and equipment shall be made in the manner provided by statute for the purchase of township supplies. If the amount involved is sufficient to require notice under statutes for bids in connection with the purchase of apparatus or equipment, the notice must offer all bidders the opportunity of proposing to sell the apparatus and equipment to the township upon a conditional sale or mortgage contract.

- (b) A bidder proposing to sell on a conditional sale or mortgage contract shall state in his bid the proposed interest rate and terms of it, to be considered by the township executive and legislative body in determining the best bid received.
- (c) All bids submitted must specify the cash price at which the bidder proposes to sell the apparatus or equipment to the township so that the executive and legislative body may determine whether it is in the best interest of the township to purchase the apparatus or equipment on the terms of a conditional sale or mortgage contract proposed by the bidder or to purchase it for cash if sufficient funds are available or can be raised by negotiating a loan with a financial institution in accordance with this section."

Assets purchased by a township or specifically with township funds should be titled proportionately in the name of the township.

### **HOME RULE**

The State Board of Accounts has through the years received inquiries and comments concerning the application of home rule. Accordingly, in an attempt to clarify some questions related to usage of home rule, we directed the following questions to the Attorney General's Office. The Conclusion portion of the response from the Attorney General's Office follows the questions.

- 1. In order for a school corporation or other unit of government to use home rule for a particular situation, must they enact a specific ordinance or resolution adopting the home rule provisions and stating the policy which is to be enacted as a result?
- 2. Can a school corporation or other unit of government expand the provisions of a statute with home rule?

For example, IC 5-10-1.1-1, regarding public employees deferred compensation plans, specifically allows a school corporation to establish a savings plan that is a defined contribution plan qualified under Section 401(a) of the Internal Revenue Code, and contribute amounts to the plan on behalf of eligible employees to be credited and allocated to an account for each employee. A school corporation claimed that "home rule powers" allowed them to contribute amounts to an employee retirement plan under Section 403(b) of the Internal Revenue Code.

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3. Most units of government have the power to enter into contracts. Can a school corporation or other unit of government enter into a contract containing provisions which are not granted by statute without specifically enacting home rule under a separate ordinance or resolution?

For example, a school corporation collectively bargained for wage related benefits under IC 20-7.5-1 4 and entered into a collective bargaining agreement which included a retirement plan under Section 403(b) of the Internal Revenue Code without first passing a home rule resolution authorizing such a benefit.

#### CONCLUSION

It is our opinion that a local unit of government or a school corporation must adopt an ordinance, resolution or written policy before exercising its home rule powers. A local unit of government may not enter into a contract as a substitute for properly adopting an ordinance, resolution or written policy. In addition, those entities may not exercise home rule powers in an area pre-empted by the General Assembly.

#### **NEW LAWS AFFECTING TOWNSHIPS**

The following is a Digest of some of the laws passed by the 2018 Regular and Special Sessions of the General Assembly affecting Townships. Please note the effective dates. Some of the laws do not pertain directly to Townships but are included for ready reference to the covered subject matter.

The Digest is not intended as an expression of legal interpretation. The Digest is also not intended to be all inclusive. References in the Digest will be to the Indiana Code in the following form (Amends IC 20-26-1-4) (Amends Indiana Code, Title 20, Article 26, Chapter 1, Section 4). The final version of each Public Law can be found on the Indiana General Assembly website (http://iga.in.gov/). If you have any questions regarding legal interpretation, please consult your Township attorney.

# Public Law 10-2018, Senate Enrolled Act 165 – Effective July 1, 2018 Township Board Terms of Office

Amends IC 36-6-2.3

Township board terms of office. Provides for the staggering of the terms of the members of township boards (other than township boards in Marion County) beginning with the 2022 general election. Establishes a process for filling vacancies and resolving ties for township board offices being elected during an election at which staggered terms are implemented.

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#### **NEW LAWS AFFECTING TOWNSHIPS**

(Continued)

### Public Law 14-2018, Senate Enrolled Act 246 – Effective July 1, 2018 Cemetery Maintenance Expenses

Amends IC 23-14-33-30; IC 23-14-48-1.5; IC 23-14-48-2; IC 23-14-48-2.4; IC 23-14-48.5-1; IC 23-14-48.5-6; IC 23-14-68-4; IC 23-14-68-4.5; IC 23-14-68-7; IC 23-14-68-9; IC

Cemetery maintenance expenses. Defines "immediate maintenance needs" of a cemetery and specifies that the income from a cemetery's perpetual care fund may be used to meet the cemetery's immediate maintenance needs. Provides that money in a cemetery's perpetual care fund may be invested in certificates of deposit, mutual funds, money market mutual funds, and other interest bearing accounts or funds. Allows a cemetery to obtain maintenance funds from the state consumer protection fund for cemetery maintenance (fund) if the appreciation and income of the principal of the cemetery's perpetual care fund are not sufficient to meet the cemetery's immediate maintenance needs. Allows the state board of funeral and cemetery service (board) to authorize a withdrawal of up to \$50,000 from the fund in response to an application concerning a cemetery in need of emergency maintenance. Authorizes the board to suspend the requirement that cemetery owners make payments to the fund if the fund balance equals or exceeds \$500,000. (Under current law, the requirement to make payments to the fund can be suspended if the fund balance equals or exceeds \$250,000.) Provides, for purposes of the law concerning township care of cemeteries, that the maintenance of a cemetery includes moving the lawn. Authorizes the trustee of a township to provide financial assistance for maintenance purposes to a cemetery that is operated by a nonprofit organization and located in the township if the trustee reasonably believes that: (1) the funds available to the cemetery from its perpetual care fund and other sources are not sufficient to provide for the necessary maintenance of the cemetery; and (2) providing financial assistance to the cemetery will help to prevent the full responsibility for maintenance of the cemetery from falling on the township. Provides that those cemeteries that are ten acres or less in size may not access the consumer protection fund for cemetery maintenance. (Current law provides that cemeteries that are: (1) ten acres or less in size; (2) owned and operated by a nonprofit mutual association in existence on June 14, 1939; and (3) in which burials took place before June 14, 1939; could not access the consumer protection fund for cemetery maintenance.) Provides that a member of the state board of funeral and cemetery service may serve not more than two consecutive terms on the board. Eliminates the consideration of a board member's service on the state board of embalmers and funeral directors as a limitation on the number of terms the member may serve on the state board of funeral and cemetery service.

### Public Law 125-2018, Senate Enrolled Act 347 – Effective July 1, 2018 Bonding Procedures

Amends IC 5-1-11-1; IC 5-11-1-2; IC 5-11-1-6; IC 14-27-6-40; IC 20-48-1-4; IC 36-3-5-8; IC 36-7-18-31; IC 36-10-3-24; IC 36-10-3-42; IC 36-10-8-16; IC 36-10-9-15; IC 36-10-10-20; IC 36-10-11-21;

Permits the following political subdivisions to sell bonds at a negotiated sale after June 30, 2018, and before July 1, 2021: (1) A consolidated city. (2) A second class city. (3) A school corporation located in a consolidated city or a second class city. (Current law requires a public sale of bonds.) Provides that this change does not apply to refinancing bonds and some revenue bonds that are dedicated to a limited purpose. Makes technical corrections.

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# NEW LAWS AFFECTING TOWNSHIPS (Continued)

### Additional Public Laws affecting Townships passed during 2018 session:

P.L. 70	SEA 376	Unclaimed property
P.L. 72	HEA 1004	Various state and local government matters
P.L. 117	HEA 1262	Tax refund intercepts for debt owed to local units
P.L. 136	HEA 1031	Cleanup of certain terms in Indiana Code
P.L. 188	HEA 1323	Motorized equipment vehicle rental excise tax

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