

# THE COUNTY BULLETIN

## And Uniform Compliance Guidelines

### ISSUED BY STATE BOARD OF ACCOUNTS

Vol. No. 397

October 2015

#### REMINDER OF ORDER OF BUSINESS

#### October

- 12 Columbus Day - Legal Holiday (IC 1-1-9-1)
- 20 Last day to report and make payment of State Income Tax withheld in September to Indiana Department of Revenue.
- 21, 22, 23 County Auditor's Fall Conference – Columbus, Indiana
- 31 Last day to file quarterly unemployment compensation report with the Indiana Department of Workforce Development.
- Last day to report and make payment of balance of Federal Income Tax withheld in the third quarter to Internal Revenue Service.

#### November

- 1 Last day for county auditor to certify to the division of state court administration the amount, if any, the county will be providing to supplement the judges salary during the ensuing calendar year. (IC 33-38-5-6(b))
- 2 Last date for County Board of Tax Adjustment [except Marion County and in a county containing a second class city (December 1)] to complete its duties. (IC 6-1.1-17-9(a))
- 3 Election Day – Legal Holiday (IC 1-1-9-1)
- 10 Last day for paying second installment of taxes without penalty. Start preparing for settlement of second installment tax collections. (IC 6-1.1-37-10)
- 11 Veterans' Day - Legal Holiday. (IC 1-1-9-1)
- 20 Last day to report and make payment of State Income Tax withheld in October to Indiana Department of Revenue.
- 26 Thanksgiving Day - Legal Holiday. (IC 1-1-9-1)

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**REMINDER OF ORDER OF BUSINESS**  
**(Continued)**

**December**

- 1 On or before this date, certify names and addresses of persons who have money due to them for salaries, wages or other reasons to County Treasurer, for determining if such persons owe delinquent taxes. (IC 6-1.1-22-14)
- Last date for County Board of Tax Adjustment in Marion County and in a county containing a second class city to complete its duties. (IC 6-1.1-17-9(a))
- 20 Last day to report and make payment of State Income Tax withheld in November to Indiana Department of Revenue.
- 25 MERRY CHRISTMAS!! Legal Holiday (IC 1-1-9-1)
- 31 Review year-end duties.
- Post and close all records completely and promptly.
- The Auditor should balance with the Treasurer and verify the amount of cash in the Treasurer's office.

**TEMPORARY JUDGES**

IC 33-38-11-9 authorizes judges of circuit, superior, or county courts to appoint temporary judges and sets their compensation at twenty-five dollars (\$25) per day. This statute states that the compensation of temporary judges is to be paid by the county.

**ELECTRONIC FUNDS TRANSFER**

IC 4-8.1-2-7 allows a political subdivision as defined in IC 36-1-2-13 to elect to receive distributions from the State by means of an electronic transfer of funds, and if such election is made, the Treasurer (of State) shall have the funds transferred electronically.

**RECORD OF HOURS WORKED**

IC 5-11-9-4 provides that records be maintained showing which hours were worked each day by officers and employees of the county.

This requirement can be met by preparing an endorsement on the payroll claim form showing the general work schedule and listing the specific employees who worked hours different from that general work schedule. Each elected officer or head of each department would be responsible for preparing such endorsement on the payroll claim for their office or department.

If an employee is employed by more than one (1) public agency or in more than one (1) position within that public agency, it is also essential that an accurate record of hours worked be maintained. In these instances we recommended that each agency and department records reflect hours worked in both positions.

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**TAX SALE – PARTIAL PAYMENTS**

IC 6-1.1-24-1.2(b) states:

“(b) A county treasurer may accept partial payments of delinquent property taxes, assessments, penalties, interest, or costs under subsection (a) after the list of real property is certified under section 1 or 1.5 of this chapter. However, a partial payment does not remove a tract or an item from the list certified under section 1 or 1.5 of this chapter unless the taxpayer complies with subsection (a) or (c) before the date of the tax sale. “

The acceptance of a partial payment after July 1<sup>st</sup> may not remove the property from the tax sale because IC 6-1.1-24-1.2 (a) states:

“(a) Except as provided in subsection (c), a tract or an item of real property may not be removed from the list certified under section 1 or 1.5 of this chapter before the tax sale unless all: (1) delinquent taxes and special assessments due before the date the list on which the property appears was certified under section 1 or 1.5 of this chapter; and (2) penalties due on the delinquency, interest, and costs directly attributable to the tax sale; have been paid in full. (our emphasis)

The acceptance of a partial payment after July 1<sup>st</sup> can remove the property from the tax sale when an agreement is made between the taxpayer and the treasurer for an arrangement to pay the taxes. IC 6-1.1-24-1.2(c) states:

“(c) A county auditor shall remove a tract or an item of real property from the list certified under section 1 or 1.5 of this chapter before the tax sale if the county treasurer and the taxpayer agree to a mutually satisfactory arrangement for the payment of delinquent taxes. “

The agreement must meet certain requirements as outlined in IC 6-1.1-24-1.2(d) which states:

“(d) The county auditor shall remove the tract or item from the list under section 1 or 1.5 of this chapter if: (1) the arrangement described in subsection (c): (A) is in writing; (B) is signed by the taxpayer, and (c) requires the taxpayer to pay the delinquent taxes in full not later than the last business day before July 1 of the year after the date the agreement is signed; and (2) the county treasurer has provided a copy of the written agreement to the county auditor.

If the taxpayer fails to make a payment as agreed, the arrangement is void and the property is placed back on the list of real property eligible for sale [IC 6-1.1-24-1.2(e)]. If the taxpayer fails to make a payment under subsection (c), there can be a subsequent arrangement between the treasurer and the taxpayer and avoid the penalties of subsection (e). [IC 6-1.1-24-1.2 (f)]

**TAX SALE – DUTIES OF COUNTY AUDITOR**

The law governing tax sales makes these requirements on the county auditor prior to the sale (these provisions do not apply to vacant or abandoned real property that is on the list prepared by the county auditor under section 1.5:

- (a) Using the certified list prepared by the County Treasurer prepare and record a list of real property eligible for sale in the Tax Sale Record, Form No. 137.

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**TAX SALE – DUTIES OF COUNTY AUDITOR (Continued)**

- (b) Prepare a notice with the list mentioned in (a), the location of each parcel, and a statement listing the date, time place and terms of the sale: (IC 6-1.1-24-2).
- (c) Post the notice at a public place of posting in the county courthouse or another public county building at least twenty-one (21) days before the earliest date on which application for judgement; (IC 6-1.1-24-3).
- (d) Give notice by publication once a week for three (3) consecutive weeks before the earliest date on which application for judgement may be made. The expenses of this publication shall be paid out of the county general fund without prior appropriation. (6-1.1-24-3)
- (e) For properties not sold at their initial tax sale, the auditor may omit the descriptions of the tracts or items of real property, if the auditor includes in the notice a statement that descriptions of those tracts or items of property are available on the country government's web site and the information may be obtained in printed form from the auditor. (IC 6-1.1-24-3)
- (f) On or before the date of the sale, list on the record (Tax Sale Record) all properties that will be offered for sale: (IC 6-1.1-24-4)
- (g) Send a notice of such sale to the owner or to at least one of the owners of such real property listed for sale for delinquent taxes or special assessments, to the last known address by certified mail, return receipt requested, and by first class mail at least 21 days before the earliest date on which the application for judgement and order for sale of real property eligible for sale may be made. If both notices are returned, the auditor shall take an additional step to notify the property owner, if the auditor determines that an additional reasonable step is practical. (Use form 137A for this purpose). (IC 6-1.1-24-4)
- (h) Present proof of the mailing to the court along with the application for judgment and order of sale. (IC 6-1.1-24-4)
- (i) At least twenty-one (21) days before application for judgments is made, send a notice by certified mail, return receipt requested, to any mortgagee, or purchaser under an installment land contract recorded in the office of the county recorder, who annually requests by certified mail a copy of the notice. (IC 6-1.1-24-3)
- (j) On the day on which the application for judgment and order of sale is made, the county auditor assisted by the county treasurer shall compile and correct the list, removing delinquencies which have been paid, and subscribe to an affidavit in the form at IC 6-1.1-24-4.6(a).
- (k) File the application for judgment and order for sale as one (1) cause of action to any court of jurisdiction jointly by the county treasurer and county auditor and shall include the affidavit and corrected list.
- (l) Auditor shall serve as clerk of the sale. (IC 6-1.1-24-5).
- (m) A business association that has not obtained a certificate of authority from, or registered with, the secretary of state or is not in good standing in Indiana or an agent of that business association is ineligible to purchase tracts or certificate of sales. If an ineligible person purchases a tract under this section, the sale of property is subject to forfeiture. (IC 6-1.1-24-5.1)
- (n) A person who owes delinquent taxes, special assessments, penalties, interest or costs directly attributable from a tax sale on a tract or an item of real property listed, may not purchase a tract offered for sale. A person with an interest in an unsafe building or a vacant and abandoned building may not purchase a property offered for sale. If a person who is ineligible purchases a tract that sale of property is subject to forfeiture. (IC 6-1.1-24-5.3)

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**TAX SALE – DUTIES OF COUNTY AUDITOR (Continued)**

- (o) A foreign business association that has not obtained a certificate of authority from, or registered with, the secretary of state or is not in good standing in Indiana and an agent of the business association is not eligible to purchase real property and may not purchase a tract offered for sale. If an ineligible foreign business association purchases a tract offered for sale, the sale of property is subject to forfeiture.

The notice required in (b) above must be published in two newspapers in the county.

It is recommended that the published and posted notice of tax sale indicate which parcels are being offered for the second time. Doing this will not only inform the owner of this fact, but will provide an orderly means of determining which parcels are subject to purchase by the county in not sold to an individual. See item (e) above for additional options for property being offered for the second time.

There are additional statutory requirements for the sale of vacant or abandoned property (IC 6-1.1-24-1.5; IC 6-1.1-24-2.3) and for properties not suitable for tax sale (IC 6-1.1-24-1.7).

**REFUND ON ACCOUNT OF ERRONEOUS TAX SALE**

IC 6-1.1-25-10 authorizes refunds to purchasers at tax sale when sales are found to be invalid. The purchaser at an erroneous tax sale is entitled to receive interest at the rate of 5% per annum on the amount paid at the sale and all types and special assessments on the property paid by the purchaser.

**FAILURE TO PAY TAX SALE BID**

If the purchaser fails to pay his bid, the property shall be offered again for sale and the purchaser shall pay a twenty five percent (25%) penalty of the amount bid. The County Prosecuting Attorney shall initiate an action in the name of the State Treasurer and amounts collected are to be deposited in the county general fund. (IC 6-1.1-24-8)

**DORMANT FUNDS**

Most counties have funds that have been inactive or dormant for a number of years. A sufficient fund balance should be retained to pay any outstanding obligations, such as bonds and interest coupons not surrendered for payment. However, to the extent of any balance not needed to cover outstanding obligations, every effort should be made by county auditors to eliminate such funds from the records. The following statutory authorities will be found governing the closing out of the above listed funds.

IC 5-1-13-2 provides that when bonds have been issued for any lawful purpose, and the purpose for which the debt was incurred has been accomplished or abandoned, the surplus or balance in such bond fund shall be transferred to the bond and interest redemption fund by the disbursing officer upon order of the legislative body. The funds so transferred are to be used for the payment of interest bearing indebtedness.

**DORMANT FUNDS (Continued)**

IC 36-1-8-5 is a general law which provides that unused and unencumbered balances in county funds which have been raised by levy on all of the taxable property of the county be transferred to the county general fund or rainy day fund, upon authority given by the county council. This section also provides that unused and unencumbered balances in funds for the redemption of poor relief bonds or like obligations for poor relief purposes by levy on all of the taxable property of a civil township be transferred to the poor relief fund of such township.

County auditors should examine any dormant finds carried on their ledgers with the view toward closing out such funds before December 31.

**RAINY DAY FUND TRANSFERS**

There have been several questions from county officials on transferring funds to the Rainy Day Fund. Specifically, there have been questions received on which funds may transfer monies to the Rainy Day fund. The term 'dedicated fund' has been used throughout the state and the local officials have asked for a meaning of the term as it relates to transfers to Rainy Day. Our audit position is as follows:

Dedicated fund is a generic term not defined in statute, but is generally construed to mean a fund set aside for a specific purpose. For purposes of transferring to the Rainy Day fund, we are limiting our position to those dedicated funds that result from statutory authority but do not include home rule funds or clearing accounts. Debt service fund are already specifically prohibited from transfer in the Rainy Day statute as so are not considered here either.

In order to determine whether or not monies in a fund may be transferred to the Rainy Day fund, an analysis would need to be made of the authority creating the fund in light of IC 36-1-8.5-1. It would be up to the county to show State Board of Accounts how money transferred to the Rainy Day fund met the criteria for transfer. However, we can provide general guidance based on our position.

Tax levy and LOIT funds have different criteria than other statutorily created funds in regard to the transfer to the Rainy Day fund. The key words to tax levy and LOIT funds are: whenever the purposes of the tax levy have been fulfilled and unencumbered balance remains in the fund and unless a statute provides that it be transferred otherwise. In general it will be up to the county to define when the purposes have been fulfilled. There are certain funds that are raised by levy that have very specific language that the balance may not be transferred, such as the assessment fund. For those funds, we would take exception if there were a transfer to Rainy Day fund. Also, for some cumulative funds such as those found in IC 6-1.1-41-1, balances in these funds may only be transferred to the General fund per IC 6-1.1-41-15 and again we would take exception if they were transferred to the Rainy Day fund.

For other funds, the statute allows for transfer to Rainy Day fund if the funding source is specified in the Rainy Day ordinance and the transfer is not otherwise prohibited by law. It is our general position that if the statute provides definitive restrictive language on the use of the funds or that the balance is not to be transferred, whether Rainy Day fund is specifically included or not, that the monies are not to be transferred to Rainy Day fund. For example, for MVH funds IC 8-14-1-4 provides that for counties, any surplus existing in the funds at the end of the year shall thereafter continue as a part of the highway funds of the county and shall be budgeted and used as already provided in this chapter. For Local Road and Street funds, IC 8-14-2-5 defines the exclusive use of the funds. Transfers from MVH and LRS (or any other fund with similar statutory restrictions) to Rainy Day fund would be prohibited and we would take exception if monies were so transferred. When there is not such restrictive language or prohibition of transfer, we will consider the county attorney's written opinion as to why the other fund would not fall under the category of prohibited and be transferred.

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**STATEWIDE E9-1-1 SERVICE**

IC 36-8-16.7-24 established a statewide 911 board to implement and oversee the statewide 911 system. The Board establishes the 911 fees and all fees are remitted to the state. The statewide 911 board distributes monies from the statewide E911 fund to the counties based on a funding schedule outlined in 36-8-16.7-37. Public Safety Answering Points (PSAPs) are to use the distributions to pay for expenses outlined in IC 36-8-16.7-38(a). The distributions may not be used for the construction, purchase, renovation or furnishing of PSAP buildings or vehicles.

IC 36-8-16.7-38(e) states: " A distribution under section 37(a)(2) of this chapter must be deposited by the treasurer of the county in a separate fund set aside for the purposes allowed by subsections (a) and (b). The fund must be known as the \_\_\_\_\_ (insert name of county) 911 fund. The county treasurer may invest money in the fund in the same manner that other money of the county may be invested, but income earned from the investment must be deposited in the fund set aside under this subsection."

The fund number from the chart of accounts is 1222.

IC 36-8-16.7-47(c) states: "Subject to subsection (d), after December 31, 2014, a county may not contain more than two (2) PSAPs. However, a county may contain one (1) or more PSAP's in addition to the number of PSAP's authorized by this section, as long as any additional PSAP's are operated: (1) by a state educational institution; (2) by an airport authority established for a county having a consolidated city; or (3) in a county having a consolidated city, by an excluded city (as defined in IC 36-3-1-7)"

**CHANGE OF VENUE**

**Claims**

In cases where there has been a change of venue from one county to another, the county where the case originated shall pay to the county to which such change of venue has been taken all such expense incurred by the county to which said change of venue shall be taken (IC 34-35-5-1).

The clerk of the circuit court shall certify and deliver to the county auditor a Change of Venue Claim in duplicate. The county auditor in turn transmits one copy to the county auditor of the county of origin. The auditor shall enter such charge in the Venue Record (Form No. 56).

Upon receipt of payment of the claim, the auditor will enter or cause to be entered in the Change of Venue Record (Form No. 40) in the clerk's office, and under the proper cause number, the name of the county of origin paying the claim, date of receipt of payment and the quietus number issued therefor. The auditor shall record such payment in the Venue Record (Form No. 56)

**Chargeable Items of Expense**

The chargeable items of expense to be audited and allowed by the court pursuant to IC 34-35-5-2 are:

1. Expense of keeping the prisoner, if any.
2. Expense of transporting the prisoner to or from any penal institution.
3. Any extraordinary expense for safekeeping to the prisoner.
4. The fee set by the venue Court under IC 33-40-2-5 for pauper counsel, if counsel was appointed by the court.

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**CHANGE OF VENUE (Continued)**

**Chargeable Items of Expense (Continued)**

5. Expense of mileage, meals, lodging and per diems paid for or to jurors.
6. The per diems paid jury commissioners for drawing any special venire.
7. \$5.00 for each day or part of a day a bailiff is engaged in assisting the court in the trial of the cause.
8. \$8.00 for each day or part of a day an official court reporter takes evidence or testimony before the judge or jury concerning the cause.
9. \$10.00 per day for each day of the trial for use of facilities and utilities.
10. Notifying the jury not to attend court after having been summoned, the sum of \$5.00.
11. The amount telephone or telegraph communications made or authorized by the court.

**RETURNED CHECKS – NON SUFFICIENT FUNDS**

An extended effort shall be made by the treasurer to recover funds from checks returned by the depositories as uncollectible. During the process of collecting, the return checks shall be carried as a cash item and the tax duplicate so noted. **DO NOT REMOVE OR DELETE THE PAYMENT ON THE TAX DUPLICATE.**

The treasurer should immediately notify the maker or drawer of the returned check. We recommend you develop a form letter detailing the procedures and consequences of not making the returned check good. Contact by telephone is usually more expedient; however you should probably follow up your verbal conversation with the form letter. If the drawer comes in to pay make sure you only accept cash, certified check or money order. The amount necessary to redeem the returned check is:

1. The amount of the returned check
2. The actual charge by the financial institution
3. An Amount not to exceed twenty dollars

In order to collect \$3 above, the board of county commissioners will need to enact a Home Rule Ordinance establishing this returned check fee.

When it is determined that the return item is uncollectible, the treasurer shall attach all related documents to a regular claim to be presented to the board of county commissioners, with an explanation. Upon the commissioner's approval of payment from the general fund, without appropriation, the county warrant is placed in the cash drawer to replace the uncollectable item and deposited as other checks. The amount tax shall be recharged on the proper duplicate by the auditor.

The amount reimbursed to the treasurer shall be deducted from the amount for apportionment in the appropriate taxing district in the next December settlement and returned to the county general fund. This amount should be shown on line 39 of the apportionment and settlement sheets as "reimbursements to county treasurer for bad checks."

IC 26-2-7-5 allows counties to pursue collection of these returned checks through the courts.

IC 26-2-7-5 states in part: "A person...is also liable for all of the following:



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**RETURNED CHECKS – NON SUFFICIENT FUNDS (Continued)**

- (1) Interest at the rate of eighteen percent (18%) per annum...
- (2) Court costs...
- (3) Reasonable attorney's fees...
- (4) Actual travel expenses...to...
  - (A) An employee or agent of the holder to file papers and attend court proceedings...
  - (B) Provide witnesses to testify in court...
- (5) A reasonable amount to compensate the holder for the time used to...
  - (A) File papers and attend court proceedings...
  - (B) Travel to and from activities...
- (6) Actual direct and indirect expenses incurred by the holder to compensate employees and agents for time used to...
  - (A) File papers and attend court proceedings...
  - (B) Travel to and from activities...
- (7) All other reasonable cost of collection."

IC 26-2-7-6(b) states: "If a person liable under this chapter does not pay to the holder the full amount of the check not more than thirty (30) days after the certified mailing of written notice that the clerk has not been paid the person is liable for, and the court shall award judgment for, the following, whichever applies:

- (1) If the face amount of the check is not greater than two hundred fifty dollars (\$250), three (3) times the face amount of the check.
- (2) If the face amount of the check is greater than two hundred fifty dollars (\$250), the face amount of the check plus five hundred dollars (\$500)."

If the county chooses to pursue collection by the procedures listed in IC 26-2-7, any amounts collected over the face amount of the check would be receipted to the General Fund.

Bank service charged may be paid to the treasurer along with the bad check at the time or reimbursement by the general fund or since money is already out of the bank account, the county auditor may post a disbursement in the general fund for the service fee. No check is written.

We are currently reviewing procedures for NSF checks and we will have any updated procedures in a future bulletin.

**ADVANCE TAX DRAWS**

IC 5-13-6-3 allows counties to advance taxes units amounting to 95% of the amount such unit would get in a distribution of the taxes collected for the unit at the time of advancement. The term "taxes collected" includes property tax and license excise tax. The request for an advance tax draw must be filed at least thirty (30) days before the treasurer is required to make the advance.

The following procedures should be followed:

1. The collections for each taxing district within the municipal corporation, as shown by the records of the county treasurer, should be multiplied by 95%.
2. Divide the answer under (1) by the total tax rate for the taxing district to obtain the factor to be used in apportioning the tax.

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**ADVANCE TAX DRAWS (Continued)**

3. Multiply the factor by the tax rate for the fund for which the advance draw is requested, to arrive at the maximum amount which can be advanced.
4. Issue an application to pay and quietus in favor of the county treasurer for the amount to be advanced to the credit of the fund for which advanced and issue a warrant therefore in favor of the proper officer of the municipal corporation.

The treasurer shall enter the advance on line 42 on the left side of the Daily Balance of Cash and Depositories and such amounts are deducted from the amount of total taxes collected shown on line 41. This will leave the total amount of taxes to be settled on line 43.

It is imperative that advances be recorded by the treasurer to insure the proper amounts are distributed at Settlement.

**COUNTY EXTRADITION AND SHERIFF ASSISTANCE FUND**

IC 35-33-14 establishes in each county a county extradition and sheriff assistance fund for the purposes of providing funding (1) to offset the cost or extraditing criminal defendants; (2) to train and equip law enforcement officers in the county; and (3) to offset other costs incurred by the county sheriff's department in providing law enforcement services. Money in the fund may not be used for any other purpose. The fund consists of the portion of late surrender fees deposited in the fund under IC 27-10-2-12(i). The fund is to be administered by the county auditor and money left at the end of the calendar year does not revert to any other fund, but remains in the county extradition and sheriff's assistance fund.

Any police officer incurring expenses in accordance with the Uniform Criminal Extradition Act, IC 35-33-10-3 should file a claim, County Form No. 17, for all expenses incurred in the extradition of prisoners. The claim should be against the county wherein the crime is alleged to have been committed. The expenses should be paid from the County General Fund if the County Extradition Fund established under IC 35-33-14 does not have a sufficient balance to pay the expenses. Assuming appropriations are not available for extradition purposes, additional appropriations should be secured in the proper legal manner.

The amount of reimbursement should be in accordance with IC 35-33-10-3(25) which provides, "The expenses shall be the fees paid to the officers of the state on whose governor the requisition was made, as now provided by law, for all necessary travel in returning such prisoner."

A county may adopt a local home rule ordinance which provides for travel advances. Naturally, we would expect sufficient documentation such as receipts for all expenses incurred (airline ticket costs, bus travel costs, etc.) The original receipts plus the remaining cash advance must agree with the total of the travel advance. Any differences will be the responsibility of the police officer.

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**DISPOSAL OF REAL OR PERSONAL PROPERTY (IC 36-1-11 and IC 5-22-22)**

The statutes regarding the disposal of county owner property may be found at 36-1-11. Disposal means the sale, exchange, transfer or lease of property.

- I. Real Property – The disposal of real property is subject to the approval of the executive or the fiscal body, if there is no executive. A public hearing must be conducted before the executive or fiscal body may approve the disposal of real property. This public hearing is subject to the notices required under IC 5-3-1.

In addition, the fiscal body of a unit must approve:

- (1) every sale of real property having an appraised value of fifty thousand dollars (\$50,000) or more;
- (2) every lease of real property for which the total annual rental payments will be twenty-five thousand dollars (\$25,000) or more; and
- (3) every transfer of real property that resulted in;
  - (a) returning gifts back to the original grantor; or
  - (b) returning a tract transferred as a gift from a not-for-profit.

IC 36-1-11 attempts to cover almost every possible type of property disposal conceivable. For example:

- (1) A disposing agent who wants to sell or transfer real property, and as a condition of sale, includes a provision for a leaseback or leaseback with option to repurchase.
- (2) A disposing agent who wants to sell or transfer real property not acquired through eminent domain procedures for any of the following purposes:
  - (a) To promote an economic development project.
  - (b) To facilitate compatible land use planning.
- (3) A disposing agent that may determine for property that is assessed at less than \$15,000 or not assessed as part of a public right of way and
  - (a) the highest and best use of the tract is sale to an abutting landowner;
  - (b) the cost to the public of maintaining the tract equals or exceeds the estimated fair market value of the tract; or
  - (c) it is economically unjustifiable to sell the tract under section 4 of this chapter.
- (4) A disposing agent who wants to sell or transfer property to a nonprofit corporation
- (5) A disposing agent who wants to sell or transfer property acquired by tax default for a nominal consideration to an abutting landowner.
- (6) A disposing agent who wants to exchange property with non-governmental entities.
- (7) A disposing agent who wants to transfer or exchange property with a governmental entity.
- (8) A disposing agent who wants to convey property which was a gift and no public funds had been expended to improve the property back to the original grantor.
- (9) A disposing agent who may want to convey a tract transferred as a gift by a not-for-profit back to the original grantor.

The above are very specific exceptions to the disposal of property and we would recommend consulting the attorney representing the county, before proceeding.

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**DISPOSAL OF REAL OR PERSONAL PROPERTY (IC 36-1-11 and IC 5-22-22) (Continued)rtdf**

A disposing agent who wants to sell or transfer real property must:

- (1) have the property appraised by two appraisers. The appraisers must be:
  - (a) professionally engages in making appraisals;
  - (b) licensed under IC 25-34.1 or
  - (c) employees of the political subdivision familiar with the value of the property.
- (2) After the property is appraised, the county commissioners shall determine a minimum bid and publish a notice in accordance with IC 5-3-1. The terms and conditions of the sale shall be set forth in the notice.
- (3) The notice must state that bids will be received beginning on the specific date and that the sale will continue from day to day for a period determined by the board of county commissioners of not more than sixty days.
- (4) The property may not be sold to a person who is ineligible under section 16 of chapter 11.
- (5) A bid submitted by a trust (as defined in IC 30-4-1(a)) must identify each
  - (a) beneficiary of the trust; and
  - (b) settlor empowered to revoke or modify the trust
- (5) A bid must be open to public inspection. A bidder may raise his bid, and the raise takes effect after the board has given written notice of that raise to the other bidders.
- (6) The county commissioners may also conduct an auction among the bidders if they consider this appropriate.
- (7) The county commissioner may sell the property to the highest and best bidder.
- (8) The county commissioners may reject all bids.
- (9) The county commissioner may hire a broker or an auctioneer to sell the property. The county may pay the broker or auctioneer a reasonable compensation out of the gross proceeds of the sale. The county commissioners may hire a broker to sell real property directly rather than using the bid process if a notice is published in accordance with IC 5-3-1 and the property has been up for bid for at least sixty days before the broker is hired and either no bids were received or all bids have been rejected.
- (10) The county commissioners may conduct a public auction solely by electronic means.

II. Personal Property:

See IC 5-22-22

**PRIVATE ROAD WORK BY COUNTIES**

IC 8-19-7-1 outlines the only procedure for placing county equipment and services at the disposal of the "resident taxpayer." Whenever such taxpayer desires the use of county highway equipment or serviced from its employees for the purpose of ditching, grading or hauling gravel or store or other services on his premises, the resident taxpayer may petition the board of commissioners to use county highway equipment and employees to do any of the work requested.

The board may order the highway supervisor to do any of the work requested if the county equipment is being used in the vicinity of the taxpayer premises and if the equipment is not being needed for county business. The county equipment may not be used for contractual work in any municipality or subdivision of the municipality.

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**PRIVATE ROAD WORK BY COUNTIES (Continued)**

The board is required to fix the charges for the work, which may not be less than the actual costs. The charge for hauling material may not be less than the actual cost per yard mile, or less than the private prevailing contract price.

The charge should be agreed upon between the resident taxpayer and the board in writing before any such services are performed, and the minutes of the board of commissioners should record all such agreements.

IC 8-19-7-2 states:

“The county highway supervisor shall keep a record of the services performed under section 1 of this chapter, and when the work is completed, the highway supervisor shall prepare an itemized statement of the work and the charges. The highway supervisor shall send one (1) copy to the petitioner, and one (1) to the county auditor. The county highway supervisor shall, at the regular monthly meeting of the executive, report work done during the month, and the charges made for the work. The county auditor shall bill all the petitioners for the services, and shall credit the money collected to the county highway fund.”

IC 8-19-7-3 states:

“If any petitioner fails to pay for any work, the charges shall be charged by the county auditor on the county tax duplicate against that person, and shall be collected in the same manner as taxes. Any amount collected by the county treasurer shall be turned over to the county auditor and credited to the county road fund under section 2 of this chapter.”

**OFFICIAL BONDS**

**I. Minimum Bond Amounts**

**A. \$30,000 per \$1,000,000 of Receipts.**

The bond amount must be at least \$30,000, but not greater than \$300,000 unless approved by the fiscal body. IC 5-4-1-18(d)(1), (2).

1. The following individuals identified in IC 5-4-1-18(d):
  - City controllers
  - City clerk-treasurers
  - Town clerk treasurers
  - Barret Law fund custodians
  - County treasurers
  - County sheriffs
  - Circuit court clerks
  - Township trustees
  - Conservancy district financial clerks
2. Solid waste management district controller. IC 5-4-1-18(f).

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**OFFICIAL BONDS (Continued)**

- B. **\$30,000.**  
County auditors must file bonds in amounts of not less than \$30,000 as fixed by the fiscal body of the county. IC 5-4-1-18(d).
- C. **\$15,000.**
1. The following individuals identified in IC 5-4-1-18(e)(1):  
City judges  
City clerks  
Town judges  
County recorder  
County surveyor  
County coroner  
County assessor
  2. Any employee directed to file an individual bond by the fiscal body of a city, town, or county. IC 5-4-1-18(a)(5).
- D. **\$5,000.**  
Employees or contractors of a city, town, county, or township “whose official duties include receiving, processing, depositing, disbursing, or otherwise having access to funds that belong to the federal government, the state, a political subdivision, or another governmental entity.” IC 5-4-1-18(a)(7), (e)(2).
- E. The SBOA may increase minimum bond coverage amounts if an examination report finds malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds. IC 5-4-1-18(j), (k), (l).

**II. Bond Terms**

- A. **One Year.** After January 1, 2016, all bonds must have a one year term. IC 5-4-1-18(m)(1). A continuation certificate is not sufficient. Consecutive yearly bonds must provide separate coverage for each year. IC 5-4-1-18(m)(2).

We will not take audit exception to a new calendar year bond term greater than one year if the current bond expires before December 31, 2015. For example, if the current bond expires on September 30, 2015, we will not take exception to a new bond term from October 1, 2015 to December 31, 2016, even though it is greater than one year. Similarly, we will not take audit exception to a new calendar year bond term less than one year if the current bond expires after December 31, 2015, but before December 31, 2016. For example, if the current bond expires on March 31, 2016, we will not take exception to a new bond term from April 1, 2016 to December 31, 2016, even though it is less than one year.

- B. **Term of Office.** Term bonds issued after January 1, 2016, are not allowable pursuant to IC 5-4-1-18(m)(1). We recommend that all current term bonds be converted to one year bonds starting January 1, 2016, to comply with the spirit of the amended statute and to reduce the risk of financial exposure to the local unit.

**OFFICIAL BONDS (Continued)**

**III. Other Types of Bonds**

- A. **Blanket Bonds.** Blanket bonds are allowable if they are authorized by ordinance, endorsed to cover faithful performance, and include aggregate coverage sufficient to cover all officers, employees, and contractors required to be bonded. IC 5-4-1-18(b).
- B. **Crime Insurance Policies.** Crime insurance policies providing additional coverage for criminal acts or omissions committed by officers, employees, or contractors are permitted if they are authorized by ordinance or resolution. IC 5-4-1-18(c). Crime insurance policies do not take the place of bonds.

**IV. Aggregate Liability**

The aggregate liability for a surety or insurer for a policy year is the sum of the amounts specified in the bonds issued by the surety or insurer for that policy year. IC 5-4-1-18(m)(2). For example, if a clerk-treasurer has four consecutive yearly bonds for \$30,000, the liability of the insurer is \$30,000 for each of the four years.

**V. Commencement Date**

After January 1, 2016, all bonds must commence on one of the following:

- 1. The first day of the calendar year;
- 2. The first day of the fiscal year of the political subdivision or governmental unit; or
- 3. The first day of the individual's service in the office or employment position for which a bond is required. IC 5-4-1-18(m)(1).

**VI. Payee**

All official bonds shall be made payable to the State of Indiana. IC 5-4-1-10. The State is considered an additional named insured on all crime insurance policies. IC 5-4-1-18(c).

**VII. Recording**

- A. All bonds must be filed with the county recorder (officials and employees of the county recorder must file with the clerk of the circuit court). Beginning July 1, 2015, copies of the bonds must also be filed with the fiscal officer of the political subdivision. IC 5-4-1-5.1(b).
- B. The fiscal officer of the political subdivision must submit copies of all bonds to the State Board of Accounts electronically via Gateway with their Annual Financial Report. IC 5-4-1-5.1(e).
- C. Bonds must be filed with the county recorder and the fiscal officer of the political subdivision within ten days of their issuance. IC 5-4-1-5.1(c).
- D. Current bonds already filed with the county recorder are not required to be re-filed with the fiscal officer of the political subdivision. For example, a bond obtained in January 2015, and properly filed with the county recorder does not need to be filed with the fiscal officer of the political subdivision. However, when the January 2015 bond expires and a new bond is obtained in January 2016, it must be filed with both the county recorder and fiscal officer of the political subdivision.

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**OFFICIAL BONDS (Continued)**

**VIII. Bonds for Employees and Contractors**

Indiana Code 5-4-1-18(a)(7) states that bonds are required for individuals “(A) who are employees or contractors of a city, town, county, or township; and (B) whose official duties include receiving, processing, depositing, disbursing, or otherwise having access to funds that belong to the federal government, the state, a political subdivision, or another governmental entity.”

The political subdivision must determine who must be bonded under the statute. The term “official duties” is not defined. It is our position that “official duties” may include duties set forth in a job description, duties that are customary or routinely performed, or duties that are assigned but not frequently performed. For example, if an office has eight employees who routinely accept payments at the clerk’s counter, then all eight employees must be bonded. If an employee is assigned to accept certain registration fees but only receives funds once every other year, then that employee must be bonded.

There is no dollar threshold or *de minimis* exception in the statute. Thus, it is our position that all employees and contractors whose official duties include receiving, processing, depositing, disbursing, or otherwise having access to public funds—regardless of the dollar amount—are required to be bonded. For example, if an office employee who, as part of her official duties, receives \$5.00 per year for microfilm copies, then she is required to be bonded.

**IX. Bonds for Other Public Officials**

Bonds for public officials are required in statutes other than IC 5-4-1-18. For example, redevelopment commissioners, library treasurers, police commissioners, and deputy marshals must all be bonded. For these officials, we take the following position:

- A. The minimum amount of the bond must be the amount stated in the statute at issue. If no amount is stated, we recommend a minimum of \$5,000, unless the position mirrors one of the offices listed in IC 5-4-1-18(a)(1)-(6). For example, we recommend a minimum bond of \$15,000 for a library treasurer.
- B. If the statute is silent as to the term of bond required, we recommend an annual bond. We will not take audit exception to a term bond or a continuation bond as long as the minimum amount of coverage is provided each year.
- C. The bond type may be individual or blanket, as long as the blanket bond is (1) authorized by ordinance, (2) endorsed to include faithful performance, and (3) includes aggregate coverage sufficient to provide coverage amounts specified for all individuals required to be bonded. See IC 5-4-1-18(b).

**X. Bonds for School Treasurers**

- A. **School Treasurers.** School treasurers, deputy treasurers, and “any individual whose official duties include receiving, processing, depositing, disbursing, or otherwise having access to funds that belong to a school corporation or the governing body of a school corporation” must be bonded. IC 20-26-4-5(a).
  - 1. The bond amount is determined by the school corporation’s governing body. IC 20-26-4-5(a).
  - 2. The term of the bond is one year commencing on July 1.



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3. The bond may be an individual bond, or a blanket bond if (1) the blanket bond is endorsed “to cover the faithful performance of all employees and individuals acting on behalf of the governing body or the governing body’s school corporation,” and (2) “includes aggregate coverage sufficient to provide coverage amounts specified for each individual required” to be bonded. IC 20-26-4-5(b).
  4. The governing body must determine who must be bonded under the statute. The term “official duties” is not defined. It is our position that “official duties” may include duties set forth in a job description, duties that are customary or routinely performed, or duties that are assigned but not frequently performed. For example, cafeteria cashiers, teachers who routinely collect lunch money from students, and employees who collect textbook rental fees must be bonded. The statute does not require the individual to be an employee of the school corporation. So, for example, parents volunteering in the school lunchroom or at an extracurricular sporting event must be bonded if their official volunteer duties include receiving public funds such as lunch money or admission fees.
  5. There is no dollar threshold or *de minimis* exception in the statute. Thus, it is our position that all individuals whose official duties include receiving, processing, depositing, disbursing, or otherwise having access to public funds—regardless of the dollar amount—are required to be bonded. For example, a teacher who collects \$1.20 per day for milk from each student in her kindergarten class is required to be bonded.
  6. There is no filing requirement in the statute. We recommend that all bonds be filed with and kept by the governing body.
- B. Extracurricular Treasurers.** Extracurricular account treasurers must be bonded if they handle funds in excess of \$300 during the school year. IC 20-41-1-6(a).
1. The bond amount is determined by the superintendent and principal of the school approximating the total “anticipated funds that will come into the possession of the treasurer at any one time during the regular school year.” IC 20-41-1-6(a). If school lunch or textbook rental fees are handled by an extracurricular treasurer, then the governing body must set the amount of the bond “sufficient to protect the account for all funds coming into the hands of the treasurer of the account.” IC 20-41-2-6(b).
  2. The term of the bond is not specified, but an extracurricular treasurer must be designated “immediately upon the opening of the school term ....” Thus, we recommend an annual bond commencing on July 1.
  3. The bond may be an individual bond or a blanket position bond for all extracurricular account treasurers. IC 20-41-1-6(b).
  4. The bond must be filed with the trustee or board of school trustees. IC 20-41-1-6(a).