

## CHAPTER II

## ORGANIZATION OF OFFICE, SALARY AND EXPENSES, AND FEES

OFFICE CREATED

The office of the clerk of the circuit court is a constitutional office. The constitution of Indiana and Indiana Statutory law provide for the election of clerk of the circuit court in each county of the state. Art. 6, Sec. 2, Ind. Const. [IC 33-32-2-2]

TERM OF OFFICE

The term of office is fixed at four years, continuing until a successor is elected and qualified. No person is eligible to hold the office of clerk more than eight years in any period of twelve. Art. 6, Sec. 2, Ind. Const.

QUALIFICATIONS

No person shall be elected or appointed as a clerk of the circuit court who is not an elector of the county, nor who has not been an inhabitant thereof, during one year next preceding election or appointment. Art. 6, Sec. 4, Ind. Const.

Each clerk must reside within the respective county and shall keep the perspective office at such place therein, and perform such duties, as may be directed by law. Art. 6, Sec. 6, Ind. Const.

An indispensable qualification to hold any office within the state, either by election or appointment, is that such person shall never have evaded, or have been convicted of evading, the Selective Service Act of the United States, or of any conspiracy or attempt to defraud the government of the United States, or of any seditious utterances in violation of any of the laws of the United States or of any other crime against the laws of the United States where the sentence imposed therefor exceeded six (6) months. [IC 5-8-3-1]

OATH

Every clerk of the circuit court before entering upon the official duties, shall take an oath to support the Constitution of the United States and of this state, and that the clerk will faithfully discharge the duties of the office. An individual appointed as a deputy is considered an employee of the political subdivision performing ministerial functions on behalf of an officer and is not required to take oath. However, if a chief deputy assumes the duties of an office during a vacancy under IC 3-13-11-12, the chief deputy must take the oath of office before entering on the official duties of the office. [IC 5-4-1-1] [IC 36-2-16-2]

ENDORSEMENT

The oath shall be endorsed on or attached to the commission or certificate, and signed by the person taking the oath, and certified to by the officer before whom the oath was taken, who shall also deliver to the person taking the oath a copy of the same. [IC 5-4-1-2]

SURETIES

The bond shall be executed by the principal and one or more freehold sureties. [IC 5-4-1-13] In the event a corporate surety bond is furnished, a freehold surety, or sureties, is not required.

## BOND

The clerk is required to give a bond conditioned for the faithful discharge and performance of the clerk's duty. The bond must be given before the commencement of the clerk's term of office. If the clerk fails to give the bond before that time, the clerk may not take office. All official bonds shall be payable to the state of Indiana and shall be obligatory to such state, upon the principal and sureties, for the faithful discharge of all duties required of such officer by any law, then or subsequently in force, for the use of any person injured by any breach of the condition thereof. [IC 5-4-1-9, 10]

County council may, by ordinance, authorize a blanket bond or crime insurance policy for clerks of the circuit court in lieu of an individual surety bond. [IC 5-4-1-18]

## AMOUNT OF BOND AND APPROVAL

The fiscal body (county council) shall fix the amount of the bond of the clerk of the circuit court in an amount equal to thirty thousand (\$30,000.00) for each one million dollars (\$1,000,000.00) of receipts of the clerk's office during the last complete fiscal year before the purchase of the bond. The amount of the bond may not be less than thirty thousand (\$30,000.00) nor more than three hundred thousand dollars (\$300,000.00). [IC 5-4-1-18] The bond of the clerk shall be approved by at least a majority of the board of county commissioners. (In Marion County, only, by the mayor of the consolidated City of Indianapolis.)

No bond shall be filed until lawfully approved. The official bond shall be approved by at least a majority of the board of county commissioners. The approval must be endorsed on the bond by the commissioners, or a majority of them. [IC 5-4-1-8]

## WHERE FILED

The official bonds of the clerks of the circuit courts shall be filed in the recorder's office of their respective counties. [IC 5-4-1-5.1]

## COST OF BOND

The cost of the bond of the clerk of the circuit court or employee shall be paid out of the general fund of the county. [IC 5-4-5-2]

## OFFICE HOURS AND PLACE

The clerk shall keep the office open at the county seat in a building provided for that purpose by the county board of commissioners, every day of the year except on Sundays and legal holidays.

The clerk shall keep the office open on those days and at those times that are necessary for the proper administration of the election statutes.

However, clerks may close their offices on those days the judge of the circuit court of their county orders the court closed in accordance with the custom and practice of the county.

Any legal action required to be taken in the office of the clerk of the circuit court during the time the office is closed, under this section, may be taken on the next following day the office is open. [IC 33-32-2-4]

## APPOINTMENT OF DEPUTIES

The clerk of the circuit court may appoint deputies, when necessary or when required, if provision has been made for paying such deputies for their services from county funds. The appointing clerk is responsible for all the official acts of their deputies. [IC 5-6-1-1] [IC 5-6-1-3]

## QUALIFICATION OF DEPUTY

Article 6, Section 4 of the Constitution of the State of Indiana prohibits the appointment of any person as a county officer who is not an elector of the county; nor anyone who shall not have been an inhabitant of the county during one year next preceding the appointment.

A deputy may perform all the official duties of the clerk, being subject to the same regulations and penalties. [IC 5-6-1-2]

An individual appointed as a deputy is considered an employee of the political subdivision performing ministerial functions on behalf of an officer and is not required to take the oath of office. [IC 5-4-1-1]

For purposes of Article 2, section 9 of the Constitution of the State of Indiana, the position of appointed deputy of an officer of a political subdivision or judicial circuit is not a lucrative office. [IC 5-6-4-3]

These Constitution and Indiana Code references provide some guidance on the position of appointed deputy clerk. However the county attorney should be consulted regarding the application of these provisions to your deputy positions in light of case law and Attorney General Opinions.

## FIRST OR CHIEF DEPUTY

In each county the clerk is entitled to appoint one first or chief deputy without the approval of the board of county commissioners.

If a county has a superior or county court or two or more court houses in which branches of county offices are maintained, the deputies in charge of the branches shall rank as first or chief deputies and shall receive compensation as such. [IC 36-2-16-9]

## BONDS OF DEPUTIES

Although deputies are not required by law to be bonded, the county council may cause deputies and employees to be bonded by either individual or blanket bonds to cover the proper discharge of duties. [IC 36-2-16-2]

## SALARIES

Before July 2 of each year the clerk shall file a statement with the county auditor (Form 144) that shows in detail the positions and the rate of compensation proposed for the clerk and for each full-time or part-time position. The county auditor is required to submit the statements (Forms 144) to the board of county commissioners at their July meeting for their review and recommendations to the county council. [IC 36-2-5-4] The county council shall fix the number of deputies and other employees and the compensation of the clerk, deputies and other employees. [IC 36-2-5-3]

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The annual salaries shall be in full for all services and in lieu of all fees, per diems, penalties, interest, costs, forfeitures, commissions, percentages, allowances, mileage and other remuneration whatsoever for official services or involving official authority [IC 36-2-7-2], except that the clerk as the secretary of the county election board may receive compensation as is provided for by the county council [IC 3-6-5-9].

### BUDGET ESTIMATES

Before the Thursday after the first Monday in August of each year, the clerk shall prepare an itemized estimate of the amount of money required for the office for the next calendar year. Each budget estimate must include the items stated in IC 36-2-5-5.

Additionally, the clerk must prepare a separate estimate of the amount of money required for each court for the next calendar year. If a court has two (2) or more judges who preside in separate rooms or over separate divisions, the clerk shall prepare a separate itemized estimate for court expenses in each room or division. Each budget estimate must include the items specified in IC 36-2-5-6.

### MILEAGE

The clerk may be called to attend meetings by the state board of accounts in accordance with IC 5-11-14-1 and by the state election division under IC 3-6-4.2-14. Expenses of attending these meetings shall be reimbursed by county general fund without appropriation in accordance with the provisions of the applicable statute referenced above.

For other travel, the clerk is entitled to a sum for mileage in the performance of official duties in an amount determined by the county council. [IC 36-2-7-3]

### PURCHASES

The board of county commissioners is the purchasing agency for the county. As such, they may establish written policies for purchases made by the purchasing agency. The written policies may apply to all purchases generally or to a specific purchase. The purchasing agency may authorize other individuals to purchase for the county by designating these individuals purchasing agents.

Purchasing agents are to follow the requirements for sealed competitive bidding in making purchases of greater than \$150,000. They must accept written quotes for purchases of at least \$50,000 but not more than \$150,000. Both of these purchasing methods are explained in detail in Chapter 15 and IC 5-22.

In making purchases of less than \$50,000, the purchasing agent must follow the purchase policies established by the purchasing agency. [IC 5-22]

### POSTAGE - CLAIM FOR PURCHASES

Clerks should anticipate their needs and file a claim with the county auditor when postage is required for the conduct of official business. The claim should be itemized as to the denomination of stamps and the amount for which the auditor should draw his warrant payable to the postmaster.

The clerk should then purchase the stamps, have the postmaster return a receipt for the amount and return the receipt to the auditor to be filed with the claim for postage that he or she was advanced.

The clerk should not use money from current receipts or from the cash change fund for the purchase of stamps and hold the postmaster's receipt in lieu of cash until the auditor reimburses the clerk.

### RECORD OF HOURS WORKED

IC 5-11-9-4 states that records shall be maintained to show which hours were worked each day of officials and employees of any political subdivision of the state and employed by more than one (1) public agency or in more than one (1) position by the same public agency.

The 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.

Another alternative is to add a statement on each Employee's Service Record, General Form 99A (1985), and/or Employee's Earnings Record, General Form 99B (1985), indicating hours to be worked daily by that individual.

### FEES - COSTS - PER DIEMS TO BE PAID TO COUNTY GENERAL FUND

The clerk shall continue to collect, account for and pay into the county general fund all fees, costs, per diems, penalties, commissions, percentages and any other remuneration of whatever kind or character for official services or involving official authority that were previously retained by the clerk as a part of his compensation.

This includes: Change of venue transcript fees, clerk's service fees, per diem and the certificate of order book entry and allowance; for issuing and recording such transcript of unpaid costs in venued actions; fish and game license fees, gross income and employment security warrant fees, birth certificate fees, naturalization and passport fees; and the fees for issuing fee bills for the collection of unpaid court costs.

The Supreme Court has held the clerk of the circuit court to be a circuit officer rather than a county officer. The Attorney General, in Official Option No. 49, 1959, held that it was the legislative intent to include the clerk under the provisions of IC 36-2-7-3, insofar as mileage is allowed for duties performed by the clerk as a member of the county election board. The Attorney General concluded that the clerk is entitled to mileage when acting as a member of the county election board.

Also, the clerk, as a member of the county election board, may receive a per diem of \$24.00 per day, reimbursement of the registration fee, an allowance for lodging for each night preceding conference attendance equal to the lodging allowance paid to state employees, and mileage at the state rate for the distance necessarily traveled in going to and returning from the place of an instruction meeting called by the state election board. The clerk shall attend such meetings. [IC 3-6-4.2-14]

The clerk is entitled to collect two dollars (\$2) from the county treasury for each calendar day on which the clerk or the clerk's deputy attend a court when it is occupied with business concerning change of venue. The payment is not affected by the number of items filed or the business transactions by the court on that day. [IC 34-35-5-8]

### OFFICIAL COURT SEAL

The circuit court of each county shall have a seal, a description of which, signed by the judge devising same, shall be filed by the clerk and recorder.

### LUCRATIVE OFFICE

"No person holding a lucrative office or appointment under the United States or under this state shall be eligible to a seat in the General Assembly; nor shall any person hold more than one lucrative office at the same time, except as in this Constitution expressly permitted; . . ." (Art. 2, Sec. 9, Ind. Const.)

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For purposes of Article 2, Section 9 of the Constitution of the State of Indiana, notary public is not a lucrative office.

A person who is a public official, or a deputy or appointee acting for or serving under a public official, may not make any change for services as a notary public in connection with any official business of that office, or of any other office in the governmental unit in which the person served unless the charges are specifically authorized by a statute other than the statute that establishes generally the fees and charges of notaries public. [IC 33-42-2-7]

A clerk of the circuit court holds a lucrative office. The clerk of the circuit court can not hold another lucrative office simultaneously with their election. It has been held that the acceptance of a lucrative office while holding another automatically vacates the former.

### CONFLICT OF INTEREST

IC 35-44.1-1-4 and IC 35-44.1-1-5 outlines certain conditions under which public servants may or may not have pecuniary interest in or derive profits from a contract or purchase connected with an action by the governmental entity that he or she serves.

This statute requires that a written disclosure describing the contract and the financial interest that the public servant has in the contract be filed within fifteen (15) days after the final action on the contract or purchase with the State Board of Accounts and the clerk of the circuit court. It is recommended that a paper or electronic record be used to record the written disclosures filed with the clerk. It is the duty of the public servant that has the financial interest to file the disclosure with the State Board of Accounts. Clerks please do not duplicate the filings with our office.

### COUNTY BOARD OF ELECTIONS

As secretary to the county election board, the clerk must annually prepare a budget estimate itemized for the amount of money necessary to be appropriated for the ensuing year. The estimate shall be submitted at the time and in the manner and form other county budget estimates are required to be filed. [IC 3-6-5-16]

The county election board may appoint and remove clerks, custodians, and other employees that are necessary in the execution of its powers. The county election board may determine the duties, rank, and salaried of its appointees. [IC 3-6-5-23]

### INSTRUCTION FOR COUNTY ELECTION BOARDS

The Indiana Election Division of the Secretary of State's Office shall call a meeting of the county election boards and the boards of registration to instruct them as to their duties, each year in which a general or municipal election is held. The division shall set the time and place of the instructional meeting and the meeting may not last more than two (2) days.

In years in which a primary election is held, the Election Division may conduct the meeting before the first day of the year and shall conduct the meeting before primary election day. Each circuit court clerk shall attend the meeting. [IC 3-6-4.2-14]

### COMPENSATION FOR ATTENDANCE AT MEETING

Each member of a county election board or board of registration shall be entitled to collect a per diem of twenty-four dollars (\$24.00) per day, a mileage allowance at the prevailing state rate for the distance necessarily traveled in going to and returning from the place of the instruction meeting, reimbursement for the payment of the instructional meeting registration fee and an allowance for lodging for each night preceding conference attendance equal to the lodging allowance provided to state employees from the county general fund without appropriation. [IC 3-6-4.2-14]

## REGISTRATION OF VOTERS

In counties where there is no board of elections and registration the clerk of the circuit court is the registration officer and shall supervise the registration of voters within the county. [IC 3-7-12-1]

## DEPUTY CLERK NOT ENTITLED TO ADDITIONAL COMPENSATION

A deputy clerk, as registration officer, is not entitled to be compensated. If a deputy clerk serves as a deputy registration officer, when properly appointed, the deputy may not be additionally compensated for such services as a deputy registration officer. (O.A.G. 15, 1962)

Deputy clerks cannot receive compensation in addition to their regular salaries for maintaining voters registration lists. [IC 36-2-7-2]

## CLERICAL ASSISTANTS TO BOARD OF ELECTIONS

County election boards are authorized to employ such clerical assistants as is necessary in the execution of their powers and the proper canvassing and tabulation of the vote. [IC 3-6-5-23; 3-12-4-4]

The county election board may fix the salaries and other necessary compensation of its appointees.

It was held by the Attorney General in O.A.G. 1936, Page 370, that deputy clerks or employees in the office of the clerk employed by the board of elections are entitled to be compensated for such services in addition to the salaries received in the performance of their official duties as deputies or employees of the clerk's office. The Attorney General suggested if any such deputy or employee of the clerk's office neglected his official duties as such deputy or employee, the remedy would be to discharge the deputy or other employee.

## ANNUAL CONFERENCE

The State Board of Accounts shall annually call a conference of clerks of the circuit courts and clerks elect to be held at such time and place as shall be fixed by the state examiner.

Each official, official elect and deputy, deputies or assistants attending any conference under this section shall be allowed, for each mile necessarily traveled in going to and returning from any such meeting by the most expeditious route, a sum for mileage at a rate determined by the county fiscal body. Each shall also be allowed under this section, an allowance for lodging for each night preceding conference attendance equal to the single room rate. However, lodging expense, in the case of one (1) day conference, shall only be allowed for persons who reside fifty (50) miles or farther from the conference location. Regardless of the duration of the conference, only one (1) mileage shall be allowed to the official, official elect, deputy or assistants furnishing the conveyance although he or she transports more than one (1) person. The official, official elect, and deputies shall also be allowed an amount for meals purchased while in attendance set by the county council.

The State Board of Accounts shall certify the number of days attended. Payments for meals, mileage and lodging shall be made upon filing a verified claim, with the auditor. Upon allowance by the board of commissioners, the auditor shall issue a warrant on the county general fund without any previous appropriation being made therefor. [IC 5-11-14-1]

LEGAL HOLIDAYS

The following are legal holidays within the state of Indiana for all purposes: New Year's Day, January 1; Martin Luther King, Jr.'s Birthday, the third Monday in January; the twelfth day of February, commonly called Lincoln's Birthday; Washington's Birthday, the third Monday in February; the movable feast day of Good Friday; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Columbus Day, the second Monday in October; Veterans' Day, November 11; Thanksgiving Day, the fourth Thursday in November; Christmas Day, December 25; the day of any general, national, state or city election or primary; and the first day of the week, commonly called Sunday.

When any of these holidays, other than Sunday, comes on Sunday, the following Monday shall be the legal holiday. When any of these holidays fall on a Saturday, the preceding Friday shall be observed as the legal holiday.

Any action taken by the County on any such holiday is valid for all purposes. [IC 1-1-9-1]