

# CITIES AND TOWNS BULLETIN

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

September 2010

### JUNE TRAINING SCHOOL

The State Board of Accounts extends its deepest appreciation to the officers and committees of the Indiana League of Municipal Clerks and Treasurers for making the arrangements and handling the registration at the School in Indianapolis. Next year's June School will be held in Merrillville as part of the League's Annual Conference during the week of June 5 through 9. Please note that the League's Fall District meetings will again qualify as State-Called meeting days. This year's meetings will be in Middlebury on October 14 and in Nashville on October 27. Registration information will be sent out by the League for the District meetings.

### CITY AND TOWN COURTS - STATE USER FEES

In each action in which a person is found to have:

- (1) committed an offense under IC 9-30-5:
- (2) violated a statute defining an infraction under IC 9-30-5; or
- (3) been adjudicated a delinquent for an act that would be an offense under IC 9-30-5, if committed by an adult;

and the person's driving privileges are suspended by the Court or the Bureau of Motor Vehicles as a result of the finding, the clerk shall collect an alcohol and drug countermeasures fee of two hundred dollars (\$200.00). [IC 33-37-5-10]

The Court shall assess a drug abuse, prosecution, interdiction, and correction fee of at least two hundred dollars (\$200) and not more than one thousand dollars (\$1,000) against a person convicted of an offense under IC 35-48-4.

In determining the amount of the drug abuse, prosecution, interdiction, and correction fee assessed against a person, a court shall consider the person's ability to pay the fee.

The Clerk shall collect the drug abuse, prosecution, interdiction, and correction fee set by the court when a person is convicted of an offense under IC 35-48-4. [IC 33-37-5-9]

IC 33-37-7-8(e) requires the Clerk of a City or Town Court to distribute monthly to the County Auditor: (1) seventy-five percent (75%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-37-4-1(b)(5), and (2) seventy-five percent (75%) of the aforementioned alcohol and drug countermeasures fees.

The remaining twenty-five percent (25%) will be distributed semiannually by the Clerk of a City or Town Court to the Auditor of State along with the State's share of court costs and any highway work zone fees, safe schools fees, regular and deferral/diversion automated record keeping fees, and family violence fees collected by the Court.

### **FUNDS – CREATING NEW FUNDS**

The State Board of Accounts is frequently asked if officials of a city or town can establish a new fund for a particular purpose or function. Quite often the municipality wishes to create a nonreverting fund by diverting revenues (usually from the general fund) to accumulate an amount for a specific long term project or a large purchase. Sometimes, the municipality proposes to appropriate money from the general fund to transfer to the newly created fund. The following is our audit position to these questions.

IC 36-1-3-6 states: “(a) if there is a constitutional or statutory provision requiring a specific manner for exercising a power, a unit wanting to exercise the power must do so in that manner. (b) If there is no constitutional or statutory provision requiring a specific manner exercising a power, a unit wanting to exercise the power must either: (1) adopt an ordinance prescribing a specific manner for exercising the power; or (2) comply with a statutory provision permitting a specific manner for exercising the power. (c) An ordinance under subsection (b)(1) must be adopted as follows: (1) In a municipality, by the legislative body of the municipality...”

We feel the powers granted by various statutes authorize the Common Council of a city or the Town Council of a town to create, by ordinance, as many funds as they feel necessary to operate their particular city or town.

The enabling ordinance should provide various types of information.

- (1) The ordinance should clearly indicate the type or types of revenue that is to go into the new fund.
- (2) The ordinance should list the purpose or purposes for which expenditures can be made from the new fund.
- (3) The ordinance should establish the life of the new fund and indicate if the fund balance is nonreverting at year end or perpetual until terminated either by the terms of the current ordinance or if another subsequent ordinance must be enacted.
- (4) The ordinance should provide guidance as to disposition of the fund balance on termination of the fund.
- (5) The ordinance should include any other terms or conditions the city or town attorney deems necessary.

It should be noted that establishing a new fund by diverting revenues that would normally go into the city or town general fund or by transferring by appropriation from the general fund to the new fund creates a possible future problem. After creating and funding the new fund, if the city or town appeals to the Department of Local Government Finance (DLGF) for an excessive levy (pursuant to IC 6-1.1-18.5-11 et seq), the DLGF may insist that any balance or balances of such funds must be transferred to the city or town general fund and considered prior to any anticipated relief from the DLGF.

### **POLICE OFFICERS – AGE LIMITATIONS – EXAMINATIONS REQUIRED**

IC 36-8-4-7 states in part: “A person may not be appointed as a member of the police department after the person has reached thirty-six (36) years of age. A person may be reappointed as a member of the department only if the person is a former member of the 1925, 1953, or 1977 fund and can complete twenty (20) years of service before reaching sixty (60) years of age. A person must pass the aptitude, physical ability and physical examination that is required by the local board of the fund and by IC 36-8-8-19 to be appointed or reappointed as a member of the department.”

### **CLERK'S RECORD PERPETUATION FUND**

Each Clerk of a City or Town Court shall establish a Clerk's Record Perpetuation Fund. The Clerk shall deposit in the fund all: (1) revenue received by the clerk for transmitting documents by facsimile machine to a person under IC 5-14-3; and (2) document storage fees required under IC 33-37-5-20.

Such fees are to be remitted by the Court to the City or Town fiscal officer at the end of each month.

The Clerk of a City or Town Court may use the money in the fund for the preservation of records and the improvement of record keeping systems and equipment. The fund would require appropriation. (IC 33-37-5-2)

### **MUNICIPAL UTILITIES – UNDERGROUND FACILITIES**

IC 8-1-26 regulates underground facilities including electric, gas, water and sewer lines. Owners and operators of these facilities must become a member of the Indiana Underground Plant Protection Services (IUPPS) and provide the following to IUPPS:

- (1) The name of each township and county in which the operator has underground facilities, including those facilities that have been abandoned in place by the operator but not yet physically removed.
- (2) The name of the operator.
- (3) The name, title, address, and telephone number of the operator's representative designated to receive the notice of intent required by IC 8-1-26-16.

An operator shall report any changes in the information contained in the list provided to the association within thirty (30) calendar days of the change. The document reflecting the changes shall be cross-referenced to the original information reported.

A person that is required, but fails, to maintain membership in the association after December 31, 2009, may be subject to a civil penalty in an amount recommended by the advisory committee and approved by the commission, not to exceed one hundred dollars (\$100). Each day that a person that is required, but fails, to maintain membership in the association constitutes a separate violation for purposes of imposing a fine.

Persons responsible for excavation or demolition projects must: (1) serve notice on IUPPS of the person's intent to excavate or demolish; and (2) perform white lining at the excavation or demolition site if the person is unable to notify IUPPS of the physical location of the excavation or demolition by street address, legal description, or highway location using mile markers or cross streets.

Persons causing damage to underground facilities who failed to notify IUPPS may be subject to a civil penalty of up to ten thousand dollars (\$10,000).

### **ACCIDENT REPORT FEES**

Accident report fees collected pursuant to IC 9-29-11-1 which are fixed by ordinance in an amount not less than five dollars (\$5) are not subject to the actual cost requirements of IC 5-14-3-8. However, any other copies of documents maintained by a law enforcement agency would be subject to IC 5-14-3-8.

**DOCUMENT FEES - CITY OR TOWN COURT**

A city or town court shall collect a fee of one dollar (\$1) per legal size or letter size page, including a page only partially covered with writing, for preparing a transcript or copy of any record. However, this would not apply to the transmitting of a document by facsimile machine or other electronic device. (IC 33-37-5-1)

**SEWER LIENS - WHEN UNENFORCEABLE**

A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the County Recorder before the conveyance to the subsequent owner. If the property is conveyed before the lien can be filed, the municipality shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not less than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

A lien attaches against real property occupied by someone other than the owner only if the utility notified the owner within twenty (20) days after the time the utility fees became sixty (60) days delinquent. However, the utility is required to give notice to the owner if the owner has given the general office of the utility written notice of the address to which the owner's notice is to be sent. A notice sent to the owner must be sent by certified mail, return receipt requested, or an equivalent service permitted under IC 1-1-7-1 to:

- (1) the owner of record of real property with a single owner; or
- (2) at least one (1) of the owners of real property with multiple owners;

at the last address of the owner for the property as indicated in the records of the county auditor on the date of the notice. The cost of sending notice under this subsection is an administrative cost that may be billed to the owner.

The municipality shall release:

- (1) liens filed with the County Recorder after the recorded date of conveyance of the property;  
and
- (2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner, and that the purchaser has not been paid by the seller for the delinquent fees. (IC 36-9-23-32)

### **CONTROLLED SUBSTANCE EXCISE TAX**

IC 6-7-3 imposes a controlled substance excise tax on persons receiving delivery of, taking possession of, or manufacturing a controlled substance. The amount of the tax varies by weight and type of controlled substance which is seized as listed in IC 6-7-3-6.

IC 6-7-3-16(b) states that, “Whenever a law enforcement agency provides information leading to the collection of a tax liability, the Department of Revenue shall award thirty percent (30%) of the total amount collected from an assessment to the law enforcement agency that provided the information that resulted in the assessment. The law enforcement agency shall use the money the agency receives to conduct criminal investigations.”

Such money may be receipted to the city or town general fund and set aside for criminal investigations. An appropriation would be required before such expenditures could be made. A city or town council could also establish a separate criminal investigations fund by ordinance and deposit such revenues into that fund.

### **UNCLAIMED PROPERTY - UNPAID CHECKS**

For warrants or checks drawn by the Auditor of State or from public funds of a political subdivision, if the check or warrant is outstanding and unpaid, an agreement to locate and recover the warrant or check is valid only if:

- (1) the fee or compensation agreed upon is not more than ten percent (10%) of the amount collected unless the amount collected is fifty dollars (\$50) or less;
- (2) the agreement is in writing;
- (3) the agreement is signed by the apparent owner; and
- (4) the agreement clearly sets forth:
  - (A) the nature and value of the property; and
  - (B) the value of the apparent owner’s share after the fee or compensation has been deducted. (IC 4-10-10-11, IC 5-11-10.5-7 and IC 32-34-1)

### **DISHONORED CHECKS**

A city or town that is unable to obtain payment of a dishonored check shall, not later than ninety (90) days after the check is initially received by the city or town, refer the matter to the Prosecuting Attorney for the county where the dishonored check was received for prosecution. (IC 36-1-8-13)

### **CONVEYANCES, MORTGAGES OR INSTRUMENTS OF WRITING**

To entitle any conveyance, mortgage or instrument of writing to be recorded, it shall be acknowledged by the grantor or proved before any:

- (1) Judge;
- (2) Clerk of a Court of Record;
- (3) Auditor;
- (4) Recorder;
- (5) Notary Public;
- (6) Mayor of a city in this or any other state;
- (7) Commissioner appointed in any other state by the Governor of Indiana;
- (8) Minister, Charge D'affaires, or Consul of the United States in any foreign country;
- (9) Clerk of the City-County Council for a consolidated city, City Clerk for a second class city, or Clerk-Treasurer for a third class city;
- (10) Clerk-Treasurer for a town; or
- (11) person authorized under IC 2-3-4-1, including a member of the General Assembly, the Principal Clerk of the House of Representatives, and the Secretary of the Senate. (IC 32-21-2-3)

### **PUBLIC NOTICE ADVERTISING - POSTING NOTICES**

If there is only one (1) newspaper published in the municipality, then publication of notices in that newspaper alone is sufficient. If no newspaper is published in the municipality then publication shall be made in a newspaper published in the county in which the municipality is located and that circulates within the municipality. [IC 5-3-1-4(c)]

If any officer charged with the duty of publishing any notice required by law is unable to procure advertisement:

- (1) at the price fixed by law;
- (2) because the newspaper refuses to publish the advertisement; or
- (3) because the newspaper refuses to post the advertisement on the newspaper's Internet web site (if required under section IC 5-3-1-1.5);

it is sufficient for the officer to post printed notices in three (3) prominent places in the political subdivision, instead of publication of the notice in the newspapers and on an Internet web site (if required under IC 5-3-1-1.5).

### **DONATIONS TO FOUNDATIONS**

Notwithstanding IC 8-1.5-2-6(d), a unit may donate the proceeds from the sale of a utility or facility or from a grant, a gift, a donation, an endowment, a bequest, a trust, or gaming revenue to a foundation under the following conditions:

- (1) The foundation is a charitable nonprofit community foundation.
- (2) The foundation retains all rights to the donation, including investment powers.
- (3) The foundation agrees to do the following:
  - (A) hold the donation as a permanent endowment.
  - (B) distribute the income from the donation only to the unit as directed by resolution of the fiscal body of the unit.
  - (C) return the donation to the general fund of the unit if the foundation:
    - (i) loses the foundation's status as a public charitable organization;
    - (ii) is liquidated; or
    - (iii) violates any condition of the endowment set by the fiscal body of the unit.

**DONATIONS TO FOUNDATIONS**

(Continued)

A unit may use income received from a community foundation only for purposes of the unit. (IC 36-1-14)

IC 36-1-2-23 defines a unit to mean a county, city or town, or township.

Gaming revenue means revenue received under IC 4-33-12-6, IC 4-33-13, IC 4-35-8.5, or an agreement to share a city's or county's part of the revenue.

**CITY AND TOWN COURT COST FUND**

Cities and towns may qualify for a distribution of the court costs collected by the various county courts. To qualify, your municipality must have maintained a law enforcement agency that prosecutes at least fifty percent (50%) of its ordinance violations in a circuit, superior, or county court located in the county.

IC 33-37-7-6 states:

“(a) Three percent (3%) of the amount of fees collected under IC 33-37-4-1(a), IC 33-37-4-2(a), IC 33-37-4-3(a), IC 33-37-4-4(a), IC 33-37-4-7(a) and IC 33-37-5-17 is the qualified municipality share to be distributed to each city and town maintaining a law enforcement agency that prosecutes at least fifty percent (50%) of its ordinance violations in a circuit, superior, or county court located in the county.

(b) The County Auditor shall determine the amount to be distributed to each city and town qualified under subsection (a) as follows:

STEP ONE: Determine the population of the qualified city or town.

STEP TWO: Add the populations of all qualified cities and towns determined in STEP ONE.

STEP THREE: Divide the population of each qualified city and town by the sum determined under STEP TWO.

STEP FOUR: Multiply the result determined under STEP THREE for each qualified city and town by the amount of the qualified municipality share.

(c) The County Auditor shall semiannually distribute to each city and town described in subsection (a) the amount computed for that city or town under STEP FOUR of subsection (b).“

When the County Auditor receives the court costs due to the county from the Clerk of the Circuit Court, the Auditor will place three percent (3%) of the total court costs collected into a separate city and town court cost fund. Semiannually, the County Auditor shall distribute the amount accumulated to each city and town that “prosecutes at least fifty percent (50%) of its ordinance violations in a circuit, superior, or county court located in the county. The distribution shall be made to all qualified cities and towns based upon their individual proportionate share of population related to the total population of all of the qualified cities and towns. The city or town fiscal officer shall receipt the distribution to the General Fund of the unit.

Each city and town that qualifies is encouraged to contact the County Auditor in your county each May and November to ensure receipt of such distribution.

**CITY AND TOWN COURT COST FUND**

(Continued)

Several questions concerning the distribution of the City and Town Court Cost Fund by the County Auditor have been asked by city, town and county officials. The questions, along with our audit positions, are as follows:

Question #1 What must a municipality do to qualify for a share of the City and Town Court Cost Fund?

Answer #1 A municipality must maintain a law enforcement agency and prosecute at least fifty percent (50%) of its ordinance violations in a Circuit, Superior, or County Court located in the county. The County Auditor shall determine the amount to be distributed to each qualified city and town. (IC 33-37-7-6)

Question #2 Does a city ordinance violation filed in County Court qualify the city to receive such funds even if the case is dismissed by the city?

Answer #2 No. The city must prosecute the case in order to qualify.

Question #3 In which semiannual period does the city or town receive a share of such funds assuming only one (1) case is filed? Is it the period in which the case was filed or is it the period in which it was prosecuted?

Answer #3 The period in which the case was prosecuted would govern the period of distribution. Distributions are to be made semiannually (June and December) for the previous six (6) months collections.

Question #4 Can a city or a town with an Ordinance Violations Bureau qualify for the distribution?

Answer #4 Yes, IC 33-36-3-6(b) states that ordinances processed through an Ordinance Violations Bureau are not to be considered in determining whether the unit prosecuted at least fifty percent (50%) of its ordinance violations in a Circuit, Superior, or County Court.

Question #5 To what fund does a city/town receipt the distributions?

Answer #5 Distributions should be receipted to the General Fund.

**FIELD EXAMINER IDENTIFICATION**

Whenever you are approached by a person requesting records who holds themselves out to be a Field Examiner of the State Board of Accounts, and you are not certain of their identity, you should request to see their picture identification card. All Field Examiners of the State Board of Accounts have been issued a picture id for this purpose. If you are uncertain whether an individual is a Field Examiner of the State Board of Accounts, please call the central office at (317) 232-2513 or the area Field Supervisor.

**FORM APPROVALS**

The following are examples of a letter and resolution which should be forwarded to this office when a city or town purchases an accounting system where the forms have already been approved for use for another city or town.

LETTERHEAD  
OF  
GOVERNMENTAL UNIT

State Board of Accounts  
302 W. Washington Street  
Room E418  
Indianapolis, IN 46204-2765

Re: Form Approvals

The **(NAME OF GOVERNING BODY)** passed the attached resolution concerning usage of forms for the **(NAME OF GOVERNMENTAL UNIT)**.

The **(NAME OF GOVERNING BODY)** is ultimately responsible for all forms and systems to be used. Accordingly, we are requesting to be authorized to use the forms and systems provided (1) and **(NAME OF CITY OR TOWN WHICH FIRST RECEIVED AN APPROVAL)** as these forms were approved by your office in writing as of **(DATE OF ORIGINAL APPROVAL)**. We will abide by the form approval requirements as stated in the "Cities and Towns Bulletin" and during audits by the State Board of Accounts.

The **(NAME OF GOVERNING BODY)** will notify you in writing if desiring to discontinue use of the system approved package. Any forms that are not in an all inclusive approved package would still need to be approved by your office. Furthermore, if we desire to use any forms which have changed since the date of original approval above, and those forms have not received a written approval from your office, we will immediately submit those forms for approval.

We also understand the process of a letter and resolution are not an attempt to provide preferential treatment to any vendor but instead are an effort to expedite the form approval process required by statute and regulation. Finally, we are aware that any system or hardware changes initiated by a vendor and the resultant costs, are vendor, market or consumer demand driven.

\_\_\_\_\_  
**(PRESIDENT OR CHAIRMAN OF THE GOVERNING BODY)**

\_\_\_\_\_  
**(DATE)**

\_\_\_\_\_  
**(CHIEF EXECUTIVE OFFICER)**

\_\_\_\_\_  
**(DATE)**

(1) The first City or Town approved would have a period after the word "provided" and the rest of the sentence would be deleted. All other Cities and Towns requesting use of that system should show the information stated after the word "provided".

**FORM APPROVALS**

(Continued)

RESOLUTION

00-01

WHEREAS, the Town Council of the Town of \_\_\_\_\_ finds that it is beneficial to utilize the financial software systems from a single vendor and,

WHEREAS, Name of Software Vendor has provided financial software systems and updates to Indiana municipalities which contain procedures and produce forms that are required and approved by Indiana State Board of Accounts and the Department of Local Government Finance:

NOW THEREFORE BE IT RESOLVED that the Town Council adopts Name of Software Vendor financial software systems and requests that the Indiana State Board of Accounts approve all forms which have been previously submitted by \_\_\_\_\_ and any updates and revisions provided in the future for use by the Town of \_\_\_\_\_.

APPROVED by the Town Council of \_\_\_\_\_, \_\_\_\_\_ County, Indiana.

THIS 2<sup>ND</sup> DAY OF MARCH 2010.

\_\_\_\_\_, COUNCIL PRESIDENT

\_\_\_\_\_, COUNCIL MEMBER

\_\_\_\_\_, COUNCIL MEMBER

ATTEST: \_\_\_\_\_  
Town Clerk-Treasurer

**QUESTIONS AND ANSWERS FROM THE JUNE 2010 CITIES AND TOWNS TRAINING SCHOOL**

**Question No.1:** What are the fees involved in filing a sewer lien?

**Answer:** When filing a sewer lien under IC 36-9-23-33, the cost of recording and releasing the lien in the Recorder's Office should be added to the amount of the lien. Additionally, a service charge of five dollars (\$5) shall also be added. Such fee is retained by the County when collected. A fifteen dollar (\$15) certification fee is added by the County Auditor when the amounts are certified to the County. The fee is also retained by the County when collected.

**Question No. 2:** What are the new requirements for notifying owners of real property occupied by someone other than the owner of the property of any delinquent sewer charges?

**Answer:** A lien attaches against real property occupied by someone other than the owner only if the utility notified the owner within twenty (20) days after the time the utility fees became sixty (60) days delinquent. However, the utility is required to give notice to the owner if the owner has given the general office of the utility written notice of the address to which the owner's notice is to be sent. A notice sent to the owner under this subsection must be sent by certified mail, return receipt requested, or an equivalent service permitted under IC 1-1-7-1 to:

(1) the owner of record of real property with a single owner; or

(2) at least one (1) of the owners of real property with multiple owners;

at the last address of the owner for the property as indicated in the records of the County Auditor on the date of the notice. The cost of sending notice is an administrative cost that may be billed to the owner.

**Question No. 3:** If a Clerk-Treasurer is not over the Utility Billing Department, what responsibilities does the Clerk-Treasurer have over other utility transactions?

**Answer:** A Clerk-Treasurer who is not responsible for utility billing and collection would still be responsible for the following:

- (1) maintaining separate utility funds on your ledgers.
- (2) maintaining and reconciling utility bank accounts.
- (3) signing utility warrants.
- (4) auditing and certifying utility claims before payment.
- (5) investing utility funds.

**Question No. 4:** Our town is in the process of selling our water utility. I receive one-third (1/3) of my total salary from the water utility. Will my salary be reduced by a third (1/3)?

**Answer:** No. IC 36-5-3-2(a) defines your compensation as the total of all money paid to you regardless of the source of funds from which the money is paid. Further, IC 36-5-3-2(c) states that the compensation of an elected town officer may not be changed in the year for which it is fixed, nor may it be reduced below the amount fixed for the previous year.

**Question No. 5:** We received an excess welfare distribution from the County and placed it in the General Fund in error. We also appropriated the distribution in the General Fund to be used for public safety purposes. How do we correct the error?

**Answer:** The money should be transferred to an Excess Welfare Distribution Fund. You would also need to obtain an additional appropriation in order to spend the money and show a reduction in the General Fund in the advertisement for the additional appropriation.

**QUESTIONS AND ANSWERS FROM THE JUNE 2010 CITIES AND TOWNS TRAINING SCHOOL**

(Continued)

**Question No. 6:** Our City's Fire Department received a Homeland Security Grant. Does this need to be appropriated?

**Answer:** In the March 2009 edition of the Cities and Towns Bulletin there is a discussion on accounting for grants. If the grant is advanced to the City before any expenditures are made, the money can be placed in a separate grant fund. No appropriation would be required in order to spend the money.

Where a federal or state grant provides for payments to be made directly to a city or town on a "reimbursement" basis after payment of expenses by the city or town, the entire amount of the federal or state reimbursement may be appropriated by the city or town council without using the additional appropriation procedures under IC 6-1.1-18-5, if the funds are provided or designated by the state or the federal government as a reimbursement of expenditures. [IC 6-1.1-18-7.5]

No separate fund for the project or program is required unless the terms of the grant require one.

When a federal grant or program requires expenditures or "matching" funds to be provided from city or town funds, an appropriation must be obtained for the amount of such expenditures or local matching funds. Individual program requirements will dictate whether the appropriation should be obtained within the applicable city or town fund for expenditures there from or whether an appropriation should be obtained within the applicable city or town fund for a transfer to a required separate fund. This matter should be set out in the terms and conditions entered into between the city or town and officials of the federal agency.

**Question No. 7:** We currently charge \$35.00 for a NSF check and the law states the maximum is \$27.50. Should we amend our ordinance setting the fee?

**Answer:** Yes. IC 35-43-5-5 limits the amount you can charge to \$27.50 or 5% to a maximum of \$250.00.

**Question No. 8:** Can we store permanent records by burning them to a CD?

**Answer:** It is our understanding from the Indiana Commission on Public Records (ICPR) that records burned to a CD would not be an approved method for permanent storage of public records.

**Question No. 9:** How long do W-2's need to be kept?

**Answer:** Per IRS Publication 15, page 5, all records of employment taxes are to be kept for at least four (4) years.

**Question No. 10:** Our Redevelopment Commission holds an executive session before each regular commission meeting. There is no specific reason given for the meetings. The Commission notifies the press once a year of the twelve (12) executive sessions. Is this proper?

**Answer:** No. IC 5-14-1.5-6.1 requires public notice of executive sessions to state the subject matter by specific reference to the enumerated instance or instances for which the executive session may be held.

**QUESTIONS AND ANSWERS FROM THE JUNE 2010 CITIES AND TOWNS TRAINING SCHOOL**

(Continued)

**Question No. 11:** Should we have a rental agreement with persons who rent our pool for parties?

**Answer:** Yes. We recommend you enter into a written agreement which covers the price to be charged and any liability issues.

**Question No. 12:** Are cities and towns required to charge sales tax on hydrant rental when the hydrants are located on private property if the owners are not tax exempt?

**Answer:** Yes. The Department of Revenue has advised that hydrant rental charges are subject to sales tax.

**Question No. 13:** If we rent our pool out for a party, is that subject to sales tax?

Answer: Yes.

**Question No. 14:** What is required to abolish our City Court?

**Answer:** IC 33-35-1-1 states that every fourth year after 2006, a second or third class city or a town may by ordinance establish or abolish a city or town court. A city or town abolishing a court shall give notice of its action to the Division of State Court Administration.

**Question No. 15:** Our town would like to fire our Town Marshal. Is there anything we need to be aware of before we do this?

**Answer:** IC 36-5-7-3 states that before terminating or suspending a Town Marshal who has been employed by the town for more than six (6) months after completing the minimum basic training requirements adopted by the Law Enforcement Training Board under IC 5-2-1-9, the legislative body must conduct the disciplinary removal and appeals procedure prescribed by IC 36-8 for city fire and police departments.

**Question No. 16:** Is the Town Marshal required to be bonded?

**Answer:** While IC 36-5-7 does not require the Marshal to obtain a surety bond, IC 5-4-1-8 states that the legislative body of a town shall approve the official bond of the Marshal. Accordingly, we recommend each Town Marshal obtain a bond under IC 5-4-1-18 in an amount of not less than fifteen thousand dollars (\$15,000).

**Question No. 17:** Do donation funds need to be appropriated?

**Answer:** Restricted donations placed in a separate donation fund would not require appropriation. Unrestricted donations placed in the General Fund would require appropriation.

**QUESTIONS AND ANSWERS FROM THE JUNE 2010 CITIES AND TOWNS TRAINING SCHOOL**

(Continued)

**Question No. 18:** Our Town is purchasing land from an individual who has the land in a CROP Program who will have to pay a penalty if he sells the land before a certain date. Can we pay the penalty?

**Answer:** IC 36-1-10.5 would limit the amount the Town could pay for the property to the average of the two appraisals. We do not recommend the Town pay more than that amount in negotiating the purchase nor should the Town pay the penalty directly.

**Question No. 19:** We have an employee who works part-time for both our Water Utility and Parks Department. What type of records does he need to keep?

**Answer:** IC 5-11-9-4 requires this person to keep detailed time records of the hours he works at both positions.