

# CITIES AND TOWNS BULLETIN

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

---

September 2004

### 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 registrations for the training session. Our special thanks go to President Beverly Stout and again we especially want to thank Fred Lewis, School Committee Chairperson. Next year's June School is tentatively scheduled for June 15 and 16, 2005, at the Indianapolis Marriott on the east side of Indianapolis.

### RETAIL SALES TAX UPDATE

Please be advised that the Department of Revenue has ruled that penalties assessed by municipality owned utilities are not subject to retail sales tax.

### 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 33-37-7-5 states:

“(a) Three percent (3%) of the amount of fees collected under IC 33-37-4-1(a), IC 33-37-4-3 (a), IC 33-37-4-4(a), IC 33-37-4-5(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).”

CITY AND TOWN COURT COST FUND – (Continued)

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 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 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.

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 33-37-7-5)

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: What fund does a city/town receipt the distributions?

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

## CLERK-TREASURER-RECEIPT AND CARE OF MONEY

IC 36-4-10-4.5(b)(1) and IC 36-5-6-6(a)(1) require city and town clerk-treasurers to receive and care for all city and town money and pay the money out only on order of the proper approving body.

## DESIGNATION OF DEPOSITORIES – DEPOSITING RECEIPTS

IC 5-13-6-1(d) requires cities and towns to deposit all funds not later than the next business day following the receipt of funds in depositories selected by the city or town as provided in an ordinance adopted by the city or town and approved as depositories of state funds.

Public funds deposited should be deposited in the same form in which they were received. This simply means all daily receipts by the political subdivision should be deposited intact.

## CASH RESERVE FUND

Pursuant to IC 8-1.5-3-11, the municipal legislative body (common council and town council), with the approval of the board, may “transfer” surplus earnings of the utility (heat, light, water or gas utility) to the general fund. (The term “Board” is defined to mean the utility’s controlling body which may be either (1) the municipal works board; (2) the common council or town council; (3) a utility service board; or, (4) the board of directors of a department of waterworks.) The money can be transferred only if terms and conditions of any bond ordinance, resolution, indenture, contract or similar instrument binding on the utility have been satisfied. [(IC 8-1.5-3-11(a))]

1. “A cash reserve fund shall be established by ordinance and carried on the records of the utility or utilities. The fund shall be used to account for “monthly contributions or transfers.....of surplus earnings of the utility or utilities.” [(IC 8-1-5-3-11(b))]
2. “The term “surplus earnings” is defined to mean “those cash earnings remaining after provision has been made to take care of current obligations such as: (a) Operating expense; (b) depreciation or replacement fund; (c) bond and interest sinking fund; (d) retirement fund; (e) any other priority fund requirements fixed by law.” [(IC 8-1.5-3-11(c)) It follows, if there are no “surplus earnings” a cash reserve fund will receive no contributions or transfers.
3. “After creation of the cash reserve fund, the legislative body may include in the municipal general fund budget, as revenue in lieu of taxes, an amount equal to the actual balance in the cash reserve fund as of June 30 of the current year. However, the available cash reserve fund balance may be transferred to the municipal general fund only during the calendar year for which the budget was adopted, and transfers may not be made from any utility funds to the general fund except from the cash reserve fund.” [(IC 8-1-5-3-11(d))]
4. “If at any time after the final approval of the budget an emergency should arise for further appropriations from the general fund, the legislative body, may, by ordinance, transfer additional money from the cash reserve fund to the general fund to provide for the additional appropriations, the transfer to be limited to the accretions to the cash reserve fund since the preceding June 30.” [(IC 8-1.5-3-11(e))]
5. “A cash reserve fund, if authorized by ordinance, may be used to make loans to another utility owned the same municipality, for periods not to exceed five (5) years, at any interest rate. The repayment of the loan and interest shall be returned to the cash reserve fund.” [(IC 8-1.5-3-11(f))]

## PREMIUM AND ACCRUED INTEREST ON BONDS ISSUED AND SOLD

IC 5-1-12-2 states:

“Whenever any bonds are sold by any municipal corporation and when the successful bidder agrees to pay and does pay any premium as a part of the bid price of such bonds, any and all premiums so received shall constitute a part of the fund which is created to retire such bonds and to pay the interest thereon.”

In the sale of bonds, “accrued interest” is the interest accrued on the obligations from the date of the bonds to the date of their delivery to the purchaser. Interest coupons attached to bonds are for exact sums of money which the issuing authority is required to pay, but between the date of bonds and date of delivery and receiving payment of the bid price, no interest is actually earned. The accrued interest is simply a reimbursement to the municipal corporation for the unearned part of the interest the municipal corporation will be required to pay pursuant to its interest coupons.

Accrued interest also must be receipted to the bond and interest sinking fund in order for it to be used in retiring the bonds and interest. Only the principal sum of the bonds can be placed in the fund to carry out the project for which the bonds were issued.

## 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)

## COURTS – LATE PAYMENT FEES

A court may adopt a local rule to impose a late payment fee on defendants paying court costs, fees, fines and civil penalties after the due dates set by the court for payment of such amounts. The clerk of a court that adopts a local rule imposing a late payment fee shall collect a late payment fee of twenty-five dollars (\$25) from the defendant.

The clerk of a city or town court shall distribute monthly to the city or town fiscal officer one hundred percent (100%) of the late payment fees collected. The city or town fiscal officer shall deposit fees distributed by a clerk in the city or town general fund. (IC 33-37-5-22)

## CLERK’S RECORD PERPETUATION FUND

IC 33-37-5-2 requires each city or town operating a city or town court to establish a clerk’s record perpetuation fund. The following shall be deposited in the fund:

1. revenue received by the court clerk for the transmitting of 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 improvement of record keeping systems and equipment. The fund would require appropriation.

## BANK/CREDIT CARD PAYMENTS TO CITY AND TOWN COURTS

The clerk of a city or town court may contract with a bank or credit card vendor for acceptance of bank or credit cards in payment of bail, fines, civil penalties, court fees and costs, or fees for the preparation, duplication, or transmission of documents. However, if there is a vendor transaction charge or discount fee, whether billed to the clerk or charged directly to the clerk's account, the clerk shall collect a credit card service fee equal to the vendor transaction charge or discount fee from the person using the bank or credit card.

The court clerk shall forward credit card service fees collected to the city or town fiscal officer. These fees may be used without appropriation to pay transaction charges or discount fees charged by the bank or credit card vendor. (IC 33-37-6).

## PUBLICATION OF LEGAL NOTICES – NUMBER OF NEWSPAPERS REQUIRED

IC 5-3-1-4(a) states that whenever officers of a political subdivision are required to publish a notice affecting the political subdivision, they shall publish the notice in two (2) newspapers published in the political subdivision.

IC 5-3-1-4(c) applies to notices by city, town or school corporation officers. If there is only one (1) newspaper published in the municipality or school corporation, then publication in that newspaper alone is sufficient. If no newspaper is published in the municipality or school corporation, then publication shall be made in a newspaper published in the county in which the municipality or school corporation is located and that circulates within the municipality or school corporation. The notice shall be posted:

- (1) at or near the city or town hall or school administration building; or
- (2) at the:
  - (A) public building where the governing body of the respective city, town, or school corporation meets; or
  - (B) post office in the municipality or school corporation (or at the bank if there is no post office);if the municipality does not have a city or town hall, or the school corporation does not have an administration building.

## PROCUREMENT CARDS

We have received inquiries concerning the potential use of "procurement cards." We understand some of the intended benefits of procurement cards are to add controls as to where purchases can be made; limit values of each purchase; prevent overspending the budget items; institute parameters on purchases; possibly reducing paperwork; etc.

The State Board of Accounts will not take exception to the use of procurement cards by a governmental unit provided the following criteria are observed:

- (1) The governing board must authorize procurement card use through an ordinance or resolution.
- (2) Issuance and use should be handled by an official or employee designated by the board.
- (3) The purposes for which the procurement card may be used must be specifically stated in the ordinance or resolution.
- (4) When the purpose for which the procurement card has been issued has been accomplished, the card should be returned to the custody of the responsible person.
- (5) The designated responsible official or employee should maintain an accounting system or log which would include the names of individuals requesting usage of the cards, their position, estimated amounts to be charged, fund and account numbers to be charged, date the card is issued and returned, etc.
- (6) Procurement cards should be used in conjunction with the accounting system.

### PROCUREMENT CARDS – (Continued)

- (7) Payment should not be made on the basis of a statement or a procurement card slip only. Procedures for payments should be no different than for any other claim. Supporting documents such as paid bills and receipts must be available. Additionally, any interest or penalty incurred due to late filing or furnishing of documentation by an officer or employee should be the responsibility of that officer or employee.
- (8) If properly authorized, an annual fee may be paid.
- (9) Procurement cards shall not be used to procure cash advances or at “ATM” machine or as a debit card.
- (10) An audit trail must exist for all transaction including changes made by an “administrator.”
- (11) Access to transactions in accordance with the Public Records Law, IC 5-14-3-1 et seq. as appropriate must be assured.
- (12) Procurement card agreements should not contain references to debt.
- (13) Governmental Units need to have available (if applicable) a copy of “SAS 70” audits of a sponsoring bank.

### LOCAL ORDINANCE VIOLATIONS – ENFORCEMENT

Local ordinance enforcement is governed by IC 36-1-6 which sets out the procedures for handling the following types of ordinance violations:

- (1) Violations on Private Property (IC 36-1-6-2),
- (2) Proceedings to Enforce Ordinances (IC 36-1-6-3),
- (3) Injunctions (IC 36-1-6-4), and
- (4) Enforcement through proceedings before administrative bodies (IC 36-1-6-9).

Violations on private property can be enforced by a city or town entering on the property and taking appropriate action to bring the property into compliance with a local ordinance. After proper notification requirements have been met, a city or town may certify the amount of any unpaid bill to bring the property into compliance to the county auditor who shall place such amount on the tax duplicate.

Certain ordinances may be enforced by a city or town without proceeding in court through:

1. an admission of violation before the violations clerk of an ordinance violation bureau under IC 33-36; or
2. administrative enforcement under IC 36-1-6-9.

An ordinance defining a moving traffic violation may not be enforced under IC 33-36 and must be enforced in accordance with IC 34-28-5 which requires such cases to be heard in any circuit, superior, county, city or town court or traffic violations bureau designated by these courts (IC 36-1-6-3).

A municipal corporation may bring civil action to enjoin any person from:

- (1) violating an ordinance regulating or prohibiting a condition or use of property; or
- (2) engaging in conduct without a license if an ordinance requires a license to engage in

the conduct.

A city or town council may adopt an ordinance providing that certain other ordinances may be enforced through a proceeding before an administrative body of the city or town. Such ordinances brought before an administrative body are limited to those restricting or prohibiting actions harmful to the land, air, or water, or those ordinances that govern the use of the public way, or the standing or parking of vehicles. (IC 36-1-6-9)

### PRETRIAL DIVERSION PROGRAM FEES

Instead of the criminal costs fee prescribed by IC 33-37-4-1 the clerk shall collect a pretrial diversion program fee if an agreement between the prosecuting attorney and the accused person entered into under IC 33-39-1-8 require payment of those fees by the accused person. The pretrial diversion program fee is:

- (1) an initial user's fee of fifty dollar (\$50);
- (2) a monthly user's fee of ten dollars (\$10) for each month that the person remains in the pretrial diversion program.

The clerk of the city or town court shall transfer to the city or town fiscal officer, not later than thirty (30) days after the fees are collected, any pretrial diversion fees collected by the clerk. The fiscal officer shall deposit such fees in the city or town user fee fund.

IC 33-37-8-4 states that upon receipt of monthly claims submitted on oath to the fiscal body by a pretrial diversion program, the fiscal body of the city or town shall appropriate from the city or town fund to the program the amount collected for the program under IC 33-37-5.

Additional fees to be collected from persons placed in a pretrial diversion program include a deferred prosecution fee, a judicial administration fee and judicial insurance adjustment fee.

### OFFICIAL BONDS – TERM

Based upon language contained in IC 5-4-1-9, it is our audit position that an official bond written to cover an elected city or town officer's term of office would satisfy the bonding requirements in IC 5-4-1-18.

If such official is subsequently reelected, it is our audit position that a new bond be acquired in lieu of a continuation certificate.

### OFFICIAL BONDS – FILING

Every elected or appointed officer, official, deputy, or employee of political subdivision who is required by IC 5-4-1-18 to file an official bond for the faithful performance of duty shall file the bond in the office of the county recorder in the county of residence of the officer, official, deputy or employee.

The bonds shall be filed within ten (10) days of their issuance or, if approval is required, within ten (10) days after their approval by the person required to approve the bonds. The recorder shall record all of the bonds filed, indexing them alphabetically under the name of the principal and referring to the title, office, and page number where recorded. The bonds shall be kept in a safe and convenient place in the recorder's office with a reference to the date filed and record and page where recorded. (IC 5-4-1-5.1)

IC 36-2-7-10(f) states that the county recorder may not collect a fee for recording an official bond of a public officer, a deputy, an appointed, or an employee.

### COMBAT ZONE PAY – IRS REGULATIONS

The following questions and answers on withholding taxes on combat zone pay were obtained from the IRS website at [www.irs.gov](http://www.irs.gov) :

Q-38: If an employer has an employee who is called to active duty and the employer continues to pay the employee's full salary while on military duty and the employee is stationed in a combat zone, does the employer withhold federal income tax from wages? If not, are there any Form W-2 reporting requirements?

## COMBAT ZONE PAY – IRS REGULATIONS – (Continued)

A-38: The employment relationship between the employee and the company was terminated when the worker was called for active military service with the U.S. government or for active service with the state National Guard. Under the circumstances, the payments made by the company to the former employees while they are in military service with the US government or active service with the state National Guard are not “wages” for services performed in “employment” for the companies. These payments, therefore, are not “wages” subject to the taxes imposed by the Federal Insurance Contributions Act and the Federal Unemployment Tax Act or to the Collection of Income Tax at Source on Wages.

- **Reference for questions 38 and 39:** IRS Revenue Ruling 6-136

Q-39: If an employer pays an employee who has been called to active duty the difference of his salary and the amounts received from the military is this subject to employment tax withholding?”

A-39: The employment relationship between the employee and the company was terminated when the worker was called for active military service with the U.S. government or for active service with the state National Guard. Under the circumstances, the payments made by the company to the former employees while they are in military service with the U.S. government or active services with the state National Guard are not “wages” for services performed in “employment” for the companies. These payments, therefore, are not “wages” subject to the taxes imposed by the Federal Insurance Contributions Act and the Federal Unemployment Tax Act or to the Collection of Income Tax at Source on Wages.

Q-40: If an employer pays an employee who is called to active duty his vacation pay is this pay subject to social security, medicare and income taxes?

A-40: Yes, vacation pay that is earned or accrued prior to the worker being called for active duty or active service is subject to withholding as if it were a regular wage payment, even if paid to the worker after activation. When vacation pay is in addition to regular wages for the vacation period, treat it as a supplemental wage payment. If the vacation pay is for a time longer than your usual payroll period, spread it over the pay periods for which you pay it. Vacation pay that is earned or accrues after the employment relationship is terminated by activation is not a wage payment.

- **Reference for questions 40-42:** Publication 15, Employer’s Tax Guide

Q-41: If a co-worker wants to donate vacation time to an employee who is called to active duty to whom is leave taxable?

A-41: The donated vacation time is taxable to the recipient of the vacation time. As a result, the employee on active duty receiving donated vacation pay is subject to withholding of social security, Medicare, and income taxes as if it were a regular wage payment. When vacation pay is in addition to regular wages for the vacation period, treat it as a supplemental wage payment. If the vacation pay is for a longer time than your usual payroll period, spread it over the pay periods for which you pay it.

Q-42: An employee received an award from their employer and wishes to donate the award to a co-worker who has been called to active duty. To whom is the award taxable?

A-42: The award is taxable to the recipient. The recipient’s award is subject to withholding of social security, Medicare and income taxes as if it were a regular wage payment. When an award is in addition to regular wages, treat it as a supplemental wage payment.

## TRAVEL EXPENSE

The following sets forth the audit position of the State Board of Accounts with regard to reimbursements made by local governmental units to their officers and employees for travel and meal expenses.

A local unit may reimburse such persons for actual miles traveled in their own motor vehicles on official business of the local unit at a reasonable rate per mile as fixed by an ordinance or resolution of the unit's legislative body. The mileage rate should be fixed by the board or commission having authority to approve claims for travel expenses. No particular mileage rate has been set by the State of Indiana for local units of government and, consequently, the mileage rate lies within the discretion of legislative body, board or commission, unless otherwise provided by statute. The body setting the mileage rate should also determine whether parking fees and toll charges are included in the rate or, on the other hand, whether such expenses are to be reimbursed separately based on the submission of receipts.

Reimbursed mileage should not include travel to and from the officer's or employee's home and regular place of employment. If more than one person rides in the same vehicle, only one mileage reimbursement is allowable. General Form 101 (or an approved substitute) should be used for claiming mileage. The odometer reading columns on this form are to be used only when the distance between points cannot be determined by fixed mileage or official highway maps.

When traveling outside the local unit's boundaries on official business, officers and employees may also be reimbursed for meals, lodging, and incidental expenses as defined in the travel policy. The claim for reimbursement should be supported by itemized receipts from hotels, restaurants, and taxi cabs used by the officer or employee while traveling on official business.

It is permissible for the legislative body of the local unit or the board or commission having the authority to approve claims to adopt an ordinance or resolution establishing a reasonable per diem rate intended to cover travel expenses other than hotel and mileage costs and the officer or employee may be reimbursed on the basis of such a per diem rate in lieu of submitting receipts. If a fixed per diem rate is established by policy, the policy should clearly indicate which type of expenses, in addition to meals, are included in the rate and which related expenses are to be reimbursed on the basis of actual receipts being submitted by the officer or employee. The policy should also define the local unit's boundaries for purposes of reimbursing travel; i.e. outside a 50-mile radius of the office, outside of the county, etc. The policy should cover a proportionate reduction in the per diem rate when meals are provided by an outside party.

When state statutes govern the amounts of allowable travel reimbursements, those statutes supersede local policy. Also, when determining the reasonableness of a mileage rate or per diem rate, consideration should be given to rates established by the State of Indiana and the Federal government. The local unit should, however, consider the income tax implications of setting its rates higher than the current Federal rates.

In all cases, an officer or employee requesting reimbursement for overnight travel is required to submit a receipt from the hotel or other meeting place where such accommodations were provided.

## BUY MONEY

The following procedures should be followed if a municipality wishes to obtain an appropriation and make expenditures for buy money or payments to informants:

- 1) Under IC 36-1-3 an ordinance should be passed allowing this type of program and associated expenditures;
- 2) An appropriation for such purpose must be obtained in the manner authorized by state statutes;
- 3) Petty cash fund procedures are to be followed as authorized by IC 36-1-8-3; and

BUY MONEY – (Continued)

- 4) A minimum documentation procedure must be followed, similar to either:
  - a) "Guidelines for the Expenditure of Confidential Funds", published by the U.S. Department of Criminal Justice.
  - b) "Guidelines For Obtaining and Accounting For Confidential Funds Used in Support of Criminal Investigations", (Revised S.O.P. PR – INV-009), by the Indiana State Police Department.

If you do not have copies of these two guidelines, please contact our office.

QUESTIONS AND ANSWERS FROM JUNE 2004 TRAINING SCHOOL

Question No. 1: What guidelines are followed for garnishment of unpaid property taxes for volunteer firefighters or council members who are only paid quarterly? Their pay is usually less than the exempt amount.

Answer: IC 6-1.1-22-14 requires cities and towns on or before June 1 and December 1 of each year to file a list of employees with the County Treasurer. IC 6-1.1-22-15 requires city and town disbursing officers to periodically make deductions from money due them if they are delinquent in the payment of their property taxes. Since there are no provisions listing how much can be deducted, we recommend you follow the limitations set out in the Garnishment law in IC 24-4.5-5-105 when making arrangements to deduct for such taxes. We further recommend you consult with the city or town attorney on this matter.

Question No. 2: We were told at a recent exit conference that we were not allowed to use government funds for the purchase of alcohol. Our attorney can find no prohibition against this in the Indiana Code. Where does it say we cannot do this?

Answer: In the "Accounting and Uniform Compliance Guidelines Manual for Cities and Towns" on page 51-3 it states that purchases of alcoholic beverages may be the personal obligation of the responsible official or employee.

Question No. 3: What are the rules that must be followed when selling scrap metal owned by a city or town? What fund would the proceeds of the sale be deposited to?

Answer: The purchasing agency for a city or town would be responsible for the disposal of city or town property. (IC 5-22-22) The proceeds from the sale of city or town property should be receipted to the fund where the property was originally purchased from. If the fund is unknown, then the money should be receipted to the general fund.

Question No. 4: Our computer system prints out a payroll report that lists all of the information required on General Form No. 99, Payroll Schedule and Voucher. However, my payroll clerk continues to post these figures by hand to the form from the printout. Is this required?

Answer: No. The computer printout could be attached to the form and the appropriate persons could then sign off on the appropriate sections requiring approval.

Question No. 5: How often do City Clerk-Treasurers need to present financial reports to the Mayor/Council?

Answer: While there are no statutes requiring financial reports or reconcilements to be presented other than the City/Town Annual Report or CTAR, we have always recommended some type of monthly report be presented which shows the balance of all funds on hand reconciled to the bank balances as well as some type of budget status report. Clerk-Treasurer's and City Treasurer's Depository Statement and Cash Reconciliation, City and Town Form No. 206, should be prepared and presented to the Council on a monthly basis. IC 5-13-6-1 (e) requires monthly bank reconcilements to be completed.

QUESTIONS AND ANSWERS FROM JUNE 2004 TRAINING SCHOOL – (Continued)

Question No. 6: How often do sewer liens need to be recorded and certified?

Answer: IC 36-9-23-33 states that as often as the officer charged with the collection of sewer fees determines is necessary, the officer shall enforce their payment by recording and certifying liens. In the September 2003 edition of the Cities and Towns Bulletin on page 10 there is a discussion on how to properly record and certify sewer liens.

Question No. 7: Can one service address have two utility deposits?

Answer: This would depend on the ordinance setting out the deposit policy for water, gas and electric utilities. For wastewater utility deposits, IC 36-9-23-28 sets out the procedures to be followed in establishing these deposits.

Question No. 8: What is the Indiana Code reference allowing us to retain unclaimed meter deposits?

Answer: For unclaimed deposits required for electric, gas and water utilities, IC 32-34-1-1 exempts these deposits from the Unclaimed Property laws. Therefore, a city or town would need to establish its own written policy on how long it will hold unclaimed deposits before receipting them into the operating fund.

On unclaimed sewer utility deposits, IC 36-9-23-28.5 requires them to be held seven (7) years before being turned over to the operating fund.

Question No. 9: There is a movement among municipal attorneys and law enforcement officers to put moving traffic violations into the ordinance violations bureau and starting a deferral program within the ordinance violations bureau. Is this possible?

Answer: IC 36-1-6-3 (c) specifically prohibits moving traffic violations from being enforced in an ordinance violations bureau. This statute states that such actions must be enforced in accordance with IC 34-28-5 which requires such actions to be taken to a county, city, or town court.

Question No. 10: Can we pay bills online by EFT?

Answer: IC 5-13-5-5 allows your council to pass an ordinance or resolution authorizing you to transact your city or town's business with a financial institution or PERF through the use of electronic funds transfer. Other than certain IRS and Indiana Department of Revenue required remittances of withholding and other taxes, we are not aware of any other laws allowing you to pay bills online by EFT.

Question No. 11: Do the minutes have to be signed to make them legal? What is the Indiana Code reference?

Answer: The Indiana Code reference setting out the requirements for memoranda of meetings is in IC 5-14-1.5-4. Nothing is mentioned concerning signature requirements. In the "Accounting and Uniform Compliance Guidelines Manual for Cities and Towns" on page 42-1 it is recommended that the proper officer sign the minutes and the clerk or clerk-treasurer attest them.

Question No. 12: Who can swear in a reserve or deputy marshal? Our marshal wants to swear in the deputies he appoints.

Answer: IC 33-42-4-1 authorizes notaries, judges of courts, mayors, city clerks, city and town clerk-treasurers, and township trustees to administer oaths of office. If the marshal is a notary public, he could swear in deputies and reserve deputies, assuming the deputies and reserves were authorized to be appointed under IC 36-5-7-6 and IC 36-8-3-20.

QUESTIONS AND ANSWERS FROM JUNE 2004 TRAINING SCHOOL – (Continued)

Question No. 13: Our town wants to acquire property in town to build a parking lot. What are the legal steps required to do this?

Answer: IC 36-1-10.5 must be followed if a city or town is going to buy real estate (land and structures) with a total price of over \$25,000. This statute requires two appraisers to be appointed and the city or town may not purchase any land or structure for a price greater than the average of the two appraisals.

Question No. 14: If you remove debris from private property, do you need to take bids?

Answer: IC 36-1-12-1 states that all public work performed or contracted for, regardless of whether it is performed on property owned or leased by a city or town, is subject to the Public Works Law. Since the law on removal of debris from property (IC 36-1-6-2) limits the amount of work you can do to clean up property to \$2,500 for residential property and \$10,000 for all other property, then you would only be required to obtain quotes from at least three persons known to deal in that type of work.

Question No. 15: We have a walking trail in our town park that we are wanting to pave. Can this be done from our MVH fund?

Answer: No. IC 8-14-1 limits the use of MVH distributions to construction, maintenance and repair of city and town streets which is defined in IC 8-23-4-4.

Question No. 16: Can an entry to a town parking lot and the repair of a sidewalk be paid from the MVH fund?

Answer: Yes. Official Opinion No. 64-1965 allows MVH distributions to be used for the construction, repair and maintenance of sidewalks adjacent to streets in cities and towns.

Question No. 17: What are the rules for the appropriation of grant money?

Answer: In the March 2002 edition of the "Cities and Towns Bulletin" on page 4 there are procedures to follow when handling grants. Grants that are received in advance of disbursement that are placed in a separate fund generally do not require appropriation. However, grant money that is reimbursed to a city or town that is receipted back to the fund where the grant item was originally paid from would require appropriation before such money could be spent.

Question No. 18: We are having problems with our fire contract negotiations with the Township. Does the Township have to provide fire protection to our town? Does the township have to provide us fire protection regardless of an approved contract?

Answer: IC 36-8-13-3 (b) allows a township to provide fire protection to municipalities that have all municipal territory within a township that do not have a full-time paid fire department without a contract as long as certain conditions are met.

Question No. 19: Are employee service records required to be kept? Can each department keep them or should the clerk-treasurer keep them in his/her office?

Answer: General Form No. 99A, Employee's Service Record, is a prescribed form which must be kept for all city and town employees. The form can be maintained by each department or in the clerk-treasurer's office.

Question No. 20: Our town recently sold its Water Utility. How should the proceeds from the sale be accounted for?

QUESTIONS AND ANSWERS FROM JUNE 2004 TRAINING SCHOOL – (Continued)

Answer: IC 8-1.5-2-6 describes the process of disposing of property of a Water, Gas, or Electric utility. This statute states that the proceeds of any sale shall be paid into the treasury of the municipality making the sale and become part of the general fund. 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 riverboat gaming revenue to a community foundation.

Question No. 21: Does the State Board of Accounts have an example of a Management's Discussion and Analysis (MD&A)?

Answer: Once a report is filed by the State Examiner, the contents of the report, including an MD&A if applicable, is considered a public document and is available for public inspection. To date, the only filed GASB 34 reports containing an MD&A are for the larger Phase 1 cities and certain other full-accrual governments. We recommend the various units of government share with each other their MD&A's with the League and other organizations for other cities and towns to consider. Keep in mind that an MD&A will by definition be specific to a particular unit of government, so it will not normally be possible to merely copy the MD&A from another city or town.