CHAPTER 20

MISCELLANEOUS GUIDELINES

LEGAL HOLIDAYS

IC 1-1-9-1 lists legal holidays within the State of Indiana.

New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
Lincoln's Birthday	February 12
Washington's Birthday	Third Monday in February
Good Friday	Friday Before Easter Sunday
Any General, National, State or City Primary	First Tuesday After First Monday in May
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Columbus Day	Second Monday in October
Any General, National, State or City Election	First Tuesday After First Monday in November
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25

and "the first day of the week" commonly called "Sunday."

IC 1-1-9-1(b) states:

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

IC 1-1-9-1(c) states:

"This section does not affect any action taken by the state, the general assembly, or a political subdivision (as defined in IC 36-1-2-13). Any action taken by the state, the general assembly, or a political subdivision on any such holiday shall be valid for all purposes."

SALARIES - COMPUTING FOR PARTIAL PAY PERIODS

An employee on a specified salary, whose employment begins or terminates in the middle of a pay period should be paid only for that part of the period that he has worked. If on a monthly basis and the employee's work is terminated at the end of the day on January 15, for example, he should receive 15/31 of his regular monthly salary for the month of January. If his employment terminates at the end of the day on February 15, he would be entitled to 15/28 or 15/29 (leap year) of his regular monthly salary for the month of February. Partial semi-monthly and bi-weekly pay periods would be computed in a similar manner.

SALES TAX ON RETAIL SALES

Liability for Collection of Sales Tax

Collections by a political subdivision from the retail sale of tangible personal property, utility services or commodities in the performance of private or proprietary activities are subject to sales tax.

Sales to all governmental agencies, manufacturers for production purposes, farmers for agricultural purposes, religious, charitable and educational organizations are exempt from the gross retail sales tax when tangible personal property, utility service or commodities are used predominantly for the purpose for which exempt. However, in order to qualify for exemption any governmental agency or any other exempt purchaser must file an exemption certificate with the political subdivision. Also, receipts from installing, constructing, servicing or removing tangible personal property used in connection with the furnishing of utility services are exempt.

All questions concerning the law or procedure for paying and collecting sales tax should be directed to the Indiana Department of Revenue, Sales Tax Division, Indiana Government Center North, Indianapolis, Indiana, 46204, telephone number (317) 233-4015.

SIGNATURE ON ACCOUNTS PAYABLE VOUCHERS AND WARRANTS

The decision as to whether or not the number of items to be signed justifies the use of a rubber stamp or other device for affixing his signature must be made by each public official responsible for signing accounts payable vouchers, warrants and other official documents.

A rubber stamp or other signing device should be used only under the personal direction of the public official and should be properly safeguarded when not in use since each official is responsible for his signature.

CASH CHANGE FUND

The establishment of a cash change fund is recommended for each political subdivision collecting licenses, fees, utility service charges or any other cash revenues. The authority for such fund is IC 36-1-8-2. The fiscal body of the political subdivision must authorize the establishment of the cash change fund.

An accounts payable voucher should be filed by the officer or employee who is charged with the duty of collecting the cash revenues for the amount deemed necessary for presentation to the proper board. The amount of the fund must be established by the fiscal body. The accounts payable voucher should contain a statement regarding the necessity for such fund together with the statutory reference authorizing its establishment.

Upon approval of the accounts payable voucher by the proper board, the fiscal officer would draw a warrant on the operating fund of the political subdivision (without appropriation, if applicable).

The warrant is to be converted to cash and retained by the officer or employee in whose favor it is drawn, who shall be held individually responsible for the custody and safekeeping of such cash.

The entire cash change fund is to be returned to the fund from which it was advanced if and when it is no longer needed, and must be returned at the conclusion of each term served by the person drawing same.

PETTY CASH FUND

As further provided by IC 36-1-8-3, the fiscal body of a political subdivision may also establish a petty cash fund for the purpose of paying small or emergency items of operating expense. A receipt shall be taken for each and every expenditure from such fund and an accounts payable voucher shall be filed by the custodian of the fund, to reimburse such fund for expenditures so made. No reimbursement shall be made unless there are attached to the accounts payable voucher receipts totaling the amount so claimed. Such reimbursement shall be approved, allowed and paid in the same manner as other accounts payable vouchers. The amount of the fund shall be established by the fiscal body of the political subdivision.

FEDERAL AID

IC 5-19-1 authorizes any political subdivision of the state to cooperate with the federal government (in any manner necessary not prohibited by law) for the purpose of accepting federal aid.

CANCELLATION OF WARRANTS - OLD OUTSTANDING CHECKS

Pursuant to IC 5-11-10.5, all checks outstanding and unpaid for a period of two years as of December 31 of each year shall be declared void.

Not later than March 1 of each year, the treasurer of each political subdivision shall prepare or cause to be prepared a list in duplicate of all checks outstanding for two or more years as of December 31 last preceding. The original copy shall be filed with the board of finance of the political subdivision and the duplicate copy maintained by the disbursing officer of the political subdivision. The treasurer shall enter the amounts so listed as a receipt to the fund or funds upon which they were originally drawn and remove the checks from the list of outstanding checks.

GROUP INSURANCE

IC 5-10-8 is the authority for a political subdivision to contract for group insurance in relation to its employees, to pay part of the cost of such insurance, and to provide for withholding from participating employees. Retirement annuities and pensions are not included within the definition of “insurance” as used in the law. Qualified retired employees may be included in the group insurance.

Employee is defined: an elected or appointed officer or official, or a full-time employee; for a local unit public employer, a full-time or part-time employee or a person who provides personal services to the unit under contract during the contract period; whose services have continued without interruption at least thirty (30) days. [IC 5-10-8-1]

> In Official Opinion No. 21, issued on June 17, 1957, the Attorney General held that under the terms of the law governmental units may participate in paying for group insurance to any extent short of full payment so long as the requirement regarding the appropriation of funds is met.

A public employer may provide programs of group insurance for its employees and retired employees through either or both of the following methods:

1. By purchasing policies of group insurance.

2. By establishing self-insurance programs.

3. By electing to participate in the local unit group of local units that offer the state employer health plan under IC 5-10-8-6.6.

However, the establishment of a self-insurance program is subject to the approval of the unit's fiscal body. [IC 5-10-8-2.6]

INSURANCE

Insurance coverage does not appear to be included within the definitions contained in the Public Purchases Law, IC 5-22, or Public Works Law, IC 36-1-12. Therefore, there is no specific statutory requirement for advertising and soliciting bids for such service. Advertising for quotations or bids for insurance is a matter for local determination.

APPROPRIATIONS - TRANSFER BETWEEN MAJOR BUDGET CLASSIFICATIONS

Political Subdivisions With Departmentalized Budgets

IC 6-1.1-18-6 states:

"(a) The proper officers of a political subdivision may transfer money from one major budget classification to another within a department or office if:

(1) they determine that the transfer is necessary;

(2) the transfer does not require the expenditure of more money than the total amount set out in the budget as finally determined under this article; and

(3) the transfer is made at a regular public meeting and by proper ordinance or resolution.

(b) A transfer may be made under this section without notice and without the approval of the department of local government finance."

Political Subdivisions Without Departmentalized Budget

As you will note, IC 6-1.1-18-6 restricts transfers to those "from one major budget classification to another within a department or office. . . ."

Your attention is further directed to the provisions of Attorney General Official Opinion No. 11, dated June 28, 1976, written in response to a question from a public school corporation regarding transferring "money from one account of its general fund to another account within its general fund without additional prior notice to the public and without prior approval of the state board of tax commissioners." The Attorney General, in Official Opinion No. 11, concludes:

"It is therefore, my official opinion that by enacting Indiana Code, section 6-1.1-18-6, the General Assembly intended to authorize a public school corporation, on the same basis as other political subdivisions of government, to transfer money from one major budget classification of its general fund to another classification within that same fund without additional public notice and prior approval of the State Board of Tax Commissioners; but such a transfer could only be made by ordinance adopted at a public meeting of the school board, and the ordinance could not authorize expenditure of money in excess of the total appropriation for the school corporation. This opinion, however, relates only to the intended applicability of Code section 6-1.1-18-6. Doubts remain as to the constitutionality of the provisions of that section which permit transfer of funds without notice."

The State Board of Accounts recognizes the provisions of this statute and official opinion and recommends the political subdivision's attorney review this information. With his written approval, the State Board of Accounts will take no audit exception in future audits of a political subdivision if transfers of appropriations are made within the General or Operating Fund, pursuant to the requirements of IC 6-1.1-18-6.

APPROPRIATIONS - ADDITIONAL

IC 6-1.1-18-5 states, in part:

"(a) If the proper officers of a political subdivision desire to appropriate more money for a particular year than the amount prescribed in the budget for that year as finally determined under this article, they shall give notice of their proposed additional appropriation. The notice shall state the time and place at which a public hearing will be held on the proposal. The notice shall be given once in accordance with IC 5-3-1-2(b).

(b) If the additional appropriation by the political subdivision is made from a fund that receives:

(1) distributions from the motor vehicle highway account established under IC 8-14-1-1 or the local road and street account established under IC 8-14-2-4; or

(2) revenue from property taxes levied under IC 6-1.1;

the political subdivision must report the additional appropriation to the department of local government finance. If the additional appropriation is made from a fund described under this subsection, subsections (f), (g), (h), and (i) apply to the political subdivision.

(c) However, if the additional appropriation is not made from a fund described under subsection (b), subsections (f), (g), (h), and (i) do not apply to the political subdivision. Subsections (f), (g), (h), and (i) do not apply to an additional appropriation made from the cumulative bridge fund if the appropriation meets the requirements under IC 8-16-3-3(c).

(d) A political subdivision may make an additional appropriation without approval of the department of local government finance if the additional appropriation is made from a fund that is not described under subsection (b). However, the fiscal officer of the political subdivision shall report the additional appropriation to the department of local government finance.

(e) After the public hearing, the proper officers of the political subdivision shall file a certified copy of their final proposal and any other relevant information to the department of local government finance.

(f) When the department of local government finance receives a certified copy of a proposal for an additional appropriation under subsection (e), the department shall determine whether sufficient funds are available or will be available for the proposal. The determination shall be made in writing and sent to the political subdivision not more than fifteen (15) days after the board receives the proposal.

(g) In making the determination under subsection (f), the board shall limit the amount of the additional appropriation to revenues available, or to be made available, which have not been previously appropriated.

(h) If the department of local government finance disapproves an additional appropriation under subsection (f), the department shall specify the reason for its disapproval on the determination sent to the political subdivision.

(i) A political subdivision may request a reconsideration of a determination of the department of local government finance under this section by filing a written request for reconsideration. A request for reconsideration must:

(1) Be filed with the department of local government finance within fifteen (15) days of the receipt to the determination by the political subdivision; and

(2) State with reasonable specificity the reason for the request.

The department of local government finance must act on a request for reconsideration within fifteen (15) days of receiving the request.

(j) This subsection applies to an additional appropriation by a political subdivision that must have the political subdivision's annual appropriations and annual tax levy adopted by a city, town, or county fiscal body under IC 6-1.1-17-20 or by a legislative or fiscal body under IC 36-3-6-9. The fiscal or legislative body of the city, town, or county that adopted the political subdivision's annual appropriation and annual tax levy must adopt the additional appropriation by ordinance before the department of local government finance may approve the additional appropriation."

Any questions relating to additional appropriations should be directed to the Department of Local Government Finance, Indiana Government Center North, Room N 1058, 100 North Senate Avenue, Indianapolis, Indiana, 46204, telephone (317) 232-3773.

APPROPRIATIONS - INSURANCE CLAIM PROCEEDS

IC 6-1.1-18-7 sets forth the procedure that shall be observed when appropriating insurance claim proceeds to replace property, as follows:

"Notwithstanding the other provisions of this chapter [6-1.1-18-1 -- 6-1.1-18-11], the fiscal officer of a political subdivision may appropriate funds received from an insurance company if:

(1) the funds are received as a result of damage to property of the political subdivision; and

(2) the funds are appropriated for the purpose of repairing or replacing the damaged property.

However, this section applies only if the funds are in fact expended to repair or replace the property within the twelve (12) month period after they are received."

Where appropriations are made for insurance claim proceeds, this need not be advertised nor approved by the Department of Local Government Finance. The amount appropriated would be added to the current appropriation account from which the expense will be paid.

APPROPRIATION OF STATE AND FEDERAL GRANT FUNDS

IC 6-1.1-18-7.5 states:

"Notwithstanding any other law, the appropriating body of a political subdivision may appropriate any funds received as a grant from the state or the federal government without using the additional appropriation procedures under section 5 of this chapter [IC 6-1.1-18-5], if the funds are provided or designated by the state or the federal government as a reimbursement of an expenditure made by the political subdivision."

PUBLIC NOTICE ADVERTISING - CLAIMS BY PUBLISHER

By the provisions of IC 5-3-1-1, the cost of all public notice advertising paid for from public funds shall be by the line and shall be computed bases on a square of two hundred fifty (250) ems at the following rates:

Before January 1, 1996, Three Dollars and Thirty Cents ($3.30) per square for the first insertion and One Dollar and Sixty-Five Cents ($1.65) per square for each additional insertion required. [IC 5-3-1-1 (b)(1)(2)]

After December 31, 1995, and before December 31, 2005, a newspaper or qualified publication may, effective January 1 of any year, increase the basic charges by 5% more than the basic charges in effect the previous year.

After December 31, 2009, a newspaper or qualified publication may, effective January 1 of any year, increase the basic charges by not more than two and three quarters percent (2.75%) more than the basic charges that were in effect during the previous year.

If the public notice advertisement contains rule or tabular work, an additional charge of fifty percent (50%) shall be allowed.

An advertisement in tabular form would include any notice in which a column of figures is consecutively compiled in alignment. Examples of tabular work include:

Notices to Taxpayers of Tax Levies (Budget Notice)
Annual Reports
Notice of Additional Appropriations

Each newspaper publishing public notice advertising shall submit proof of publication and claim for payment on General Form Number. 99P in duplicate on each public notice advertisement published. If more than two proofs of publication are required by any official, the newspaper shall be allowed to charge $1.00 for each additional copy so furnished. [IC 5-3-1-1 (d)]

If a newspaper maintains an internet web site, a notice that is published in the newspaper must also be posted in the newspaper's web site on the same day the notice appears in the newspaper. A newspaper may not charge a fee for posting a notice on the newspaper web site.

In auditing claims for publication of such notices all that is necessary is to actually count the number of lines and multiply this by the number of columns to secure the number of equivalent lines, which should be multiplied by the price per line.

PROPERTY TAXES - REQUEST FOR ADVANCES

IC 5-13-6-3 (b) requires the county treasurer to advance property taxes to any political subdivision prior to the semi-annual distribution of taxes, where the funds are needed, upon receipt of a written request from the proper officer of the political subdivision. The county treasurer shall advance such taxes not later than thirty (30) days after receipt of the written request for funds from the political subdivision. Any such advances may not exceed 95% of the total taxes already collected at the time of advance which are due the governmental unit. Upon notice from the county treasurer of the amount to be advanced, the county auditor shall draw a warrant upon the county treasurer from the amount. The amount of the advance must be available immediately for the use of the political subdivision.

If a county auditor fails to make an advance by the deadline, the political subdivision may recover interest on the undistributed tax collections under IC 6-1.1-27.1.

CLAIMS - PAYMENT OF

IC 5-11-10-2 states, in part:

"(a) Claims against a political subdivision of the state must be approved by the officer or person receiving the goods or services, be audited for correctness and approved by the disbursing officer of the political subdivision, and, where applicable, be allowed by the governing body having jurisdiction over allowance of such claims before they are paid. If the claim is against a governmental entity (as defined in section 1.6 of this chapter), the claim must be certified by the fiscal officer.

(b) The state board of accounts shall prescribe a form which will permit claims from two (2) or more claimants to be listed on a single document and, when such list is signed by members of the governing body showing the claims and amounts allowed each claimant and the total claimed and allowed as listed on such document, it shall not be necessary for the members to sign each claim.

(c) Notwithstanding subsection (b), only:

(1) the chairperson of the board of directors of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal); or

(2) the chairperson's designee; is required to sign the claim form described under this section.

(d) The form prescribed under this section shall be prepared by or filed with the disbursing officer of the political subdivision, together with:

(1) the supporting claims if payment is made under section 1 of this chapter; or

(2) the supporting invoices or bills if payment is made under section 1.6 of this chapter.

All such documents shall be carefully preserved by the disbursing officer as a part of the official records of the office.

(e) Where under any law it is provided that each claim be allowed over the signatures of members of a governing body, or a claim docket or accounts payable voucher register be prepared listing claims to be considered for allowance, the form and procedure prescribed in this section shall be in lieu of the provisions of the other law."

IC 5-11-10-1.6 states, in part:

"(a) As used in this section, "governmental entity" refers to any of the following: . . .

(4) A regional water or sewer district organized under IC 13-26 or under IC 13-3-2 (before its repeal). . .

(6) A board of an airport authority under IC 8-22-3. . .

(8) A conservancy district.

(9) A public transportation corporation under IC 36-9-4.

(10) A commuter transportation district under IC 8-5-15. . .

(12) A solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal).

(13) A levee authority established under IC 14-27-6.

(14) A county building authority under IC 36-9-13.

(15) A soil and water conservation district established under IC 14-32.

(16) The northwestern Indiana regional planning commission established by IC 36-7-7.6- 3.

(17) The commuter rail service board established under IC.8-24-5.

(18) The regional demand and scheduled bus service board established under IC 8-24-6.

(b) As used in this section, “claim” means a bill or an invoice submitted to a governmental entity for goods and services.

(c) The fiscal officer of a governmental entity may not draw a warrant or check for payment of a claim unless:

(1) there is a fully itemized invoice or bill for the claim;

(2) the invoice or bill is approved by the officer or person receiving the goods and services;

(3) the invoice or bill is filed with the governmental entity's fiscal officer;

(4) the fiscal officer audits and certifies before payment that the invoice or bill is true and correct; and

(5) payment of the claim is allowed by the governmental entity’s legislative body or the board having jurisdiction over allowance of payment of the claim . . .

(d) The fiscal officer of a governmental entity shall issue checks or warrants for claims by the governmental entity that meet all of the requirements of this section. The fiscal officer does not incur personal liability for disbursements:

(1) processed in accordance with this section; and

(2) for which funds are appropriated and available.

(e) The certification provided for in subsection (c)(4) must be on a form prescribed by the state board of accounts”

CLAIMS - ITEMIZATION

Because the term “itemized” has not been defined in the Indiana Code, we have recommended the following as a guide to local officials responsible for the approval and payment of claims:

A claim to be properly itemized should show the kind of service, where performed, date service rendered, by whom, rate per day, number of hours, rate per hour, price per foot, per yard, per hundred, per pound, per ton, etc

BONDS-DISPOSITION OF SURPLUS PROCEEDS OF BOND ISSUES OR INVESTMENT EARNINGS

IC 5-1-13-2 states:

(a) Notwithstanding any other law, whenever:

(1) bonds are issued by any local issuing body in the state of Indiana for any lawful purpose or project;

(2) the purpose or project for which the bonds were issued has been accomplished or abandoned; and

(3) a surplus remains from the proceeds of the bonds or investment earnings derived from the proceeds of those bonds;

the local issuing body may use the surplus only in the manner prescribed by subsection (b), (c), or (d).

(b) The legislative body or other governing body of any such local issuing body may by an order, ordinance, or resolution entered of record direct the disbursing officer of such local issuing body to transfer the surplus bond proceeds or investment earnings to the fund of the local issuing body pledged to the payment of principal and interest on those bonds, and upon such order, ordinance, or resolution being made, the disbursing officer shall make such transfer. Thereafter such funds transferred shall be used for the payment of the bonds to which the surplus bond proceeds or investment earnings are attributable or interest due for such bonds.

(c) Surplus bond proceeds or investment earnings may be used by a local issuing body for the following purposes:

(1) To maintain a debt service reserve fund for the bonds to which the surplus bond proceeds or investment earnings are attributable, at the level required under the terms of the bonds, if the local issuing body adopts an ordinance, resolution, or order authorizing that use of the proceeds or earnings.

(2) To pay the principal or interest, or both, on any other bonds of the local issuing body, if the local issuing body adopts an ordinance, a resolution, or an order authorizing the use of the surplus proceeds to pay principal or interest on the bonds.

(3) To reduce the rate or amount of ad valorem property taxes, special benefit taxes on property, or tax increment revenues imposed by or allocated to the local issuing body.

(d) This section applies to bonds that are not payable from ad valorem property taxes, special benefit taxes on property, or tax increment revenues derived from property taxes. Surplus bond proceeds or investment earnings may be used by a local issuing body for the same purpose or type of project for which the bonds were originally issued, if:

(1) the fiscal officer of the local issuing body certifies before or at the time of that use that the surplus was not anticipated at the time of issuance of the bonds; and

(2) the board or legislative body responsible for issuing the bonds takes action approving the use of surplus bond proceeds or investment earnings for the same purpose or type of project for which the bonds were originally issued.

IC 5-1-13-3 states:

"Notwithstanding any other law, income from the investment of proceeds of the sale of bonds issued by any political subdivision that are payable from property taxes shall be applied to the improvement or the public purpose for which the bonds were issued or shall be used to pay interest on the bonds and in no event may such income be used for any other purpose except as provided in section 2 of this chapter."

CLAIMS - PENALTIES WHEN NOT PAID TIMELY

IC 5-17-5 provides every "political subdivision shall pay a late payment penalty at a rate of one percent (1%) per month on amounts due on written contracts for public works, personal services, goods and services, equipment, and travel, whenever the . . . political subdivision fails to make timely payment." This statute does not include contracts for road and street work. IC 36-1-12-17 provides for interest payments on late payments for road work.

Timely payment is defined, with some exceptions, to occur if ". . . a check or warrant is mailed or delivered on the date specified for the amount specified in the applicable contract documents, or, if no date is specified, within thirty-five (35) days of receipt of goods or services, or receipt of a properly completed claim. . . "

For the purpose of this statute, payment by a political subdivision is timely if:

1. a date for payment is not specified in an applicable contract;

2. a claim:

   (a) for payment for goods or services; and

   (b) that must be approved by a local legislative body or boards is submitted to the body or board; and

3. the political subdivision pays the claim within thirty-five (35) days following the first regularly scheduled meeting of the body or board that is held at least ten (10) days after the body or board receives the claim.

Pursuant to IC 5-17-5-2, the interest requirement does not apply to the following:

"(1) Interagency or intergovernmental transactions.

(2) Amounts payable to employees . . . of . . . political subdivisions as reimbursements for expenses.

(3) Claims subject to a good faith dispute, if before the date of timely payment notice of the dispute is:

   (a) sent by certified mail;

   (b) personally delivered; or

   (c) sent in accordance with procedure in the contract.

(4) Contracts entered into before September 1, 1983.

(5) Contracts related to highway or road construction, reconstruction, or maintenance. . . .

(6) Claims, contracts, or projects that are to be paid exclusively with federal funds."

A contractor who is receiving late payment penalties from a government who is unable to make timely payments to a subcontractor because of a state agency or political subdivision's failure to make timely payment to the contractor shall pay interest to the subcontractor at the rate of one percent (1%) per month on the amount due the subcontractor after the contractor receives payment and any penalty paid under this statute. Any interest that remains unpaid to the subcontractor at the end of any thirty (30) day period shall be added to the principal amount of the debt. After that time, interest accrues on the aggregate of the principal and unpaid interest." [IC 5-17-5-4]

It is noted, existing statutes require the funds and appropriations must be available prior to entering into a contract. (Past court decisions have rendered contracts invalid when funds and appropriations were not provided prior to signing the contracts.) With this in mind, why should contractual payments ever need to be delayed? The Attorney General will have to provide the State Board of Accounts with legal guidance regarding the fiscal officer's responsibility for making interest payments on delayed contractual payments if the contract was entered into without regard to these statutes. Another unanswered question is the position of the fiscal officer when claims and/or receiving information are delayed by the receiving department personnel or department head. To prevent this situation, please do not be late in making such payments.

The State Board of Accounts' official position concerning payment by governmental officials of late charges, penalties, and interest is as follows:

> For many years, the audit position of the State Board of Accounts was that under conditions where negligent nonfeasance or misfeasance in office by a public official resulted in the public entity accruing penalty and interest charges for failure to file or deposit state or federal taxes or pay other valid claims, the amount of the penalty and interest was deemed the personal responsibility of the official.
>
> At the present time when payment of penalty and interest from public funds is found in an audit, the field examiners are instructed to write up in complete detail the facts concerning the payments, including the official's explanation along with any mitigating circumstances. The information is sent to the State Examiner for review and resolution. A formal response will be returned to the field examiner(s) and incorporated in the audit working papers prior to the exit conference with the local officials. This provides the public official opportunity for response if needed.

COLLECTION OF DELINQUENT SEWAGE CHARGES

As referenced in separate chapters of this manual, conservancy districts and regional districts are required to follow the process found in IC 36-9-23-31 through 33 with respect to the collection of delinquent sewage accounts.

IC 36-9-23-31 states as follows:

> “If fees assessed against real property under this chapter or any statute repealed by IC 19-2-5-30 (repealed September 1, 1981) are not paid within the time fixed by the municipal legislative body, they are delinquent. A penalty of ten percent (10%) of the amount of the fees attaches to the delinquent fees. The amount of the fee, the penalty, and a reasonable attorney's fee may be recovered by the board in a civil action in the name of the municipality.”

IC 36-9-23-32 states:

> “(a) Fees assessed against real property under this chapter or under any statute repealed by IC 19-2-5-30 constitute a lien against the property assessed. The lien is superior to all other liens except tax liens. Except as provided in subsections (b) and (c), the lien attaches when notice of the lien is filed in the county recorder's office under section 33 [IC 36-9-23-33] of this chapter.
>
> (b) 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 more 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.

(c) 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 under this subsection is an administrative cost that may be billed to the owner.

(d) 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 36-9-23-33 states:

"(a) An officer described in subsection (b) may defer enforcing the collection of unpaid fees and penalties assessed under this chapter until the unpaid fees and penalties have been due and unpaid for at least ninety (90) days.

(b) Except as provided in subsection (l), the officer charged with the collection of fees and penalties assessed under this chapter shall enforce their payment. As often as the officer determines is necessary in a calendar year, the officer shall prepare either of the following:

(1) A list of the delinquent fees and penalties that are enforceable under this section, which must include the following:

(A) The name or names of the owner or owners of each lot or parcel of real property on which fees are delinquent.

(B) A description of the premises, as shown by the records of the county auditor.

(C) The amount of the delinquent fees, together with the penalty.

(2) An individual instrument for each lot or parcel of real property on which the fees are delinquent.

(c) The officer shall record a copy of each list or each individual instrument with the county recorder who shall charge a fee for recording the list or each individual instrument in accordance with the fee schedule established in IC 36-2-7-10. The officer shall then mail to each property owner on the list or on an individual instrument a notice stating that a lien against the owner's property has been recorded. Except for a county having a consolidated city, a service charge of five dollars ($5), which is in addition to the recording fee charged under this subsection and under subsection (f), shall be added to each delinquent fee that is recorded.

(d) [Applies to Indianapolis only.]

(e) Using the lists and instruments prepared under subsection (b) and recorded under subsection (c), the officer shall, not later than ten (10) days after the list or each individual instrument is recorded under subsection (c), certify to the county auditor a list of the liens that remain unpaid for collection in the next May. The county and its officers and employees are not liable for any material error in the information on this list.

(f) The officer shall release any recorded lien when the delinquent fees, penalties, service charges, and recording fees have been fully paid. The county recorder shall charge a fee for releasing the lien in accordance with IC 36-2-7-10.

(g) On receipt of the list under subsection (e), the county auditor of each county shall add a fifteen dollar ($15) certification fee for each lot or parcel of real property on which fees are delinquent, which fee is in addition to all other fees and charges. The county auditor shall immediately enter on the tax duplicate for the municipality the delinquent fees, penalties, service charges, recording fees, and certification fees, which are due not later than the due date of the next May installment of property taxes. In a county having a consolidated city the delinquent fees, penalties, service charges, and recording fees are due not later than the due date of the next installment of property taxes. The county treasurer shall then include any unpaid charges for the delinquent fee, penalty, service charge, recording fee, and certification fee to the owner or owners of each lot or parcel of property, at the time the next cycle's property tax installment is billed.

(h) After certification of liens under subsection (e), the officer may not collect or accept delinquent fees, penalties, service charges, recording fees, or certification fees from property owners whose property has been certified to the county auditor. This subsection does not apply to a county containing a consolidated city [Marion County].

(i) If a delinquent fee, penalty, service charge, recording fee, and certification fee are not paid, they shall be collected by the county treasurer in the same way that delinquent property taxes are collected.

(j) At the time of each semiannual tax settlement, the county treasurer shall certify to the county auditor all fees, charges, and penalties that have been collected. The county auditor shall deduct the service charges and certification fees collected by the county treasurer and pay over to the officer the remaining fees and penalties due the municipality. The county treasurer shall retain the service charges and certification fees that have been collected, and shall deposit them in the county general fund.

(k) Fees, penalties, and service charges that were not recorded before a recorded conveyance shall be removed from the tax roll for a purchaser who, in the manner prescribed by section 32(d) of this chapter, files a verified demand with the county auditor.

(l) A board may write off a fee or penalty under subsection (a) that is for less than forty dollars ($40)."

Special attention should be given to making proper entries for recording bad debt expense when the properly verified documents are presented by a real estate purchaser pursuant to IC 36-9-23-32(d). The verified demands shall be retained for subsequent review during audit of the records.

Whether the records are maintained on a cash or accrual basis, the individual consumer's ledger will be credited for the amount written off as a bad debt. The amounts written off should be noted in the governing board's minutes. (This would also apply to bad debts of a water, electric, or gas utility.)

For those sewage service providers who maintain records on an accrual basis, the following is a suggested general journal entry for recording the bad debt expense:

	Debit	Credit
Bad Debt Expense	$ xxx.xx	
Accounts Receivable - Consumers		$ xxx.xx

To record bad debt expense due to purchaser's verified demand pursuant to IC 36-9-23-32(d). (This entry would also be used where a board wrote off an account under IC 36-9-23-33(l).)

BONDS - REGISTERED

IC 5-1-15 authorizes political subdivisions to issue “bonds, notes, evidences of indebtedness, or other written obligations” in fully registered or book entry form.

The entity may employ any bank or trust company as paying agent or registrar, co-registrar, or depository institution. The bank or trust company need not be a depository bank under IC 5-12, and need not be located within the State of Indiana. [IC 5-1-15-4]

Notwithstanding any other provision of law, registrars or registration books or transfer records for bonds, notes, evidences of indebtedness, or other written obligations of any entity are not public records, but are only for the use of the entity, any trustee, fiduciary, paying agent, registrar, co-registrar, or transfer agent. A trust department of a bank having possession of these records shall not disclose them to a bond department, commercial department, subsidiary of the bank, or a subsidiary of the parent corporation of the bank. [IC 5-1-15-5]

Registrars of bond issues shall keep a register of ownership of bonds. [IC 5-1-15-6]

In an effort to facilitate accounting procedures, the State Board of Accounts has issued the following instructions:

1. If a bank, trust company, or other financial institution has been employed as a paying agent or registrar, a properly certified listing of bondholders from the paying agent or registrar along with a signed claim [IC 5-11-10-1] shall serve as mailing list for the fiscal officer. There is no requirement for each individual bondholder to file a claim.

2. The mailing of the funds for bonds and coupons coming due must be mailed in such a manner to ensure receipt by the bondholder by the due date specified. (Personnel of financial institutions state they usually make such mailings by first class mail one to three business days in advance of the due date. They do not mail by certified or registered mail due to costs involved. We suggest you review this with your political subdivision’s attorney.)

3. Since the paying agency or registrar shall keep a register to ownership of bonds and all bonds and coupons shall be paid when becoming due, we see no reason for the municipality to duplicate those same records maintained by the paying agent or registrar by keeping a bond register. There should be no unpaid outstanding matured bonds or coupons.

4. In all instances when employing a bank, trust company, or other financial institution, be sure to protect the municipality from any liability arising due to any possible errors relating to names and addresses of current bondholders. This protection may be obtained by the financial institution furnishing a bond or insurance in favor of the political subdivision.

Please consult your political subdivision's attorney regarding instructions for handling registered bonds.

BANKCARD / CREDIT CARD AND OTHER METHODS OF PAYMENT

IC 36-1-8-11 authorizes the fiscal body of a political subdivision to accept payments by cash, check, bank draft, money order, bank card or credit card, electronic funds transfer or any other financial instrument authorized by the fiscal body. If there is a charge to the political subdivision for the use of the financial instrument, the political subdivision may collect a sum equal to the amount of the charge from the person who used the financial instrument

GHOST EMPLOYMENT

IC 35-44.1-1-3 states:

"(a) A public servant who knowingly or intentionally:

(1) hires an employee for the governmental entity that the public servant serves; and

(2) fails to assign to the employee any duties, or assigns to the employee any duties not related to the operation of the governmental entity;

commits ghost employment, a Class D felony.

(b) A public servant who knowingly or intentionally assigns to an employee under the public servant's supervision any duties not related to the operation of the governmental entity that the public servant serves commits ghost employment, a Class D felony.

(c) A person employed by a governmental entity who, knowing that the person has not been assigned any duties to perform for the entity, accepts property from the entity commits ghost employment, a Class D felony.

(d) A person employed by a governmental entity who knowingly or intentionally accepts property from the entity for the performance of duties not related to the operation of the entity commits ghost employment, a Class D felony.

(e) Any person who accepts property from a governmental entity in violation of this section and any public servant who permits the payment of property in violation of this section are jointly and severally liable to the governmental entity for that property. The attorney general may bring a civil action to recover that property in the county where the governmental entity is located or the person or public servant resides.

(f) For the purposes of this section, an employee of a governmental entity who voluntarily performs services:

(1) that do not:

(A) promote religion;

(B) attempt to influence legislation or governmental policy; or

(C) attempt to influence elections to public office;

(2) for the benefit of:

(A) another governmental entity; or

(B) an organization that is exempt from federal income taxation under Section 501(c)(3)of the Internal Revenue Code;

(3) with the approval of the employee's supervisor; and

(4) in compliance with a policy or regulation that:

(A) is in writing;

(B) is issued by the executive officer of the governmental entity; and

(C) contains a limitation on the total time during any calendar year that the employee may spend performing the services during normal hours of employment;

is considered to be performing duties related to the operation of the governmental entity."

RAINY DAY FUND

IC 36-1-8-5.1 authorizes political subdivisions to establish a Rainy Day Fund and states, in part:

"(a) A political subdivision may establish a rainy day fund by the adoption of: . . .

(2) a resolution, in the case of any other political subdivision.

(b) An ordinance or a resolution adopted under this section must specify the following:

(1) The purposes of the rainy day fund.

(2) The sources of funding for the rainy day fund, which may include the following:

(A) unused and unencumbered funds under:

(i) section 5 of this chapter;

(ii) IC 6-3.5-1.1-21.1;

(iii) IC 6-3.5-6-17.3; or

(iv) IC 6-3.5-7-17.3.

(B) Any other funding source:

(i) specified in the ordinance or resolution adopted under this section; and

(ii) not otherwise prohibited by law.

(c) The rainy day fund is subject to the same appropriation process as other funds that receive tax money.

(d) In any fiscal year, a political subdivision may transfer under section 5 of this chapter not more than ten percent (10%) of the political subdivision's total annual budget for that fiscal year, adopted under IC 6-1.1-17, to the rainy day fund.

(e) A political subdivision may use only the funding sources specified in subsection (b)(2)(A) or in the ordinance or resolution establishing the rainy day fund. The political subdivision may adopt a subsequent ordinance or resolution authorizing the use of another funding source.

(a) The department of local government finance may not reduce the actual or maximum permissible levy of a political subdivision as a result of a balance in the rainy day fund of the political subdivision."

IC 36-1-8-5 states, in part:

"(a) This section applies to all funds raised by a general or special tax levy on all the taxable property of a political subdivision.

(b) Whenever the purposes of a tax levy have been fulfilled and an unused and unencumbered balance remains in the fund, the fiscal body of the political subdivision shall order the balance of that fund to be transferred as follows, unless a statute provides that it be transferred otherwise: . . .

(4) Funds of any other political subdivision, to the general fund or rainy day fund of the political subdivision, as provided in section 5.1 of this chapter. However, if the political subdivision is dissolved or does not have a general fund or rainy day fund, then to the general fund of each of the units located in the political subdivision in the same proportion that the assessed valuation of the unit bears to the total assessed valuation of the political subdivision. . . .

(f) Transfers to a political subdivision's rainy day fund may be made at any time during the political subdivision's fiscal year."