CHAPTER 4
OTHER UNIFORM COMPLIANCE GUIDELINES

ESTABLISHMENT OF CITY AND TOWN COURTS

During 1986, and during every fourth year after 1986, a second or third-class city or a town may by ordinance establish or abolish a city or town court. An ordinance to establish a city or town court must be adopted not less than one (1) year before the judge's term would begin under IC 33-10.1-3-1.1.

The judge for a court shall be elected under IC 3-10-6 or IC 3-10-7 at the municipal election in November 1987 and every four (4) years thereafter.

A court shall come into existence on January 1 of the year following the year in which a judge is elected to serve in that court.

A city or town court in existence on January 1, 1986, may continue in operation until it is abolished by ordinance.

A city or town that establishes or abolishes a court shall give notice of its action to the division of state court administration of the office of judicial administration under IC 33-2.1-7. [IC 33-10.1-1-4]

ELECTION OF JUDGE - CERTAIN TOWNS

In a town that:

1. Adopts an ordinance under IC 3-10-6-2.6; and

2. Subsequently adopts an ordinance to establish a town court under IC 33-10.1-1-3,

notwithstanding IC 33-10.1-1-3, the judge of the town court shall be elected at the next municipal election not conducted in a general election year. The successors of the judge shall be elected at the first general election following the municipal election and every four (4) years thereafter. [IC 33-10.1-1-4]

POWERS OF JUDGES

A judge of a city or town court may adopt rules for conducting the business of the court and has all powers incident to a court of record in relation to the attendance of witnesses, the punishment of contempts, the enforcement of its orders, and the issuing of commissions for taking depositions in cases pending in the court. The judge may administer oaths and give all necessary certificates for the authentication of the records and proceedings of the court.

If the judge is temporarily absent or unable to act, he shall appoint a reputable practicing attorney to preside in his absence. The special judge has all the powers and rights and shall perform all the duties of the judge of the court as fully as the regular judge appointing him. [IC 33-10.1-2-1]

JURISDICTION - CITY COURTS

A city court has the following jurisdiction over crimes, infractions, and ordinance violations:

1. Jurisdiction of all violations of the ordinances of the city.

2. Jurisdiction of all misdemeanors and all infractions. [IC 33-10.1-2-2]

JURISDICTION - CITIES AND TOWNS IN LAKE COUNTY

The city court of each of the four (4) cities having the largest populations and the town court of a town having the largest population in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) has concurrent civil jurisdiction with the circuit court of the county where the amount in controversy does not exceed three thousand dollars ($3,000). The court has jurisdiction in any action where the parties or the subject matter are in the county in which the city is located. However, the city court does not have jurisdiction in:

1. Actions for slander or libel;

2. Matters relating to decedents' estates, appointment of guardians, and all related matters;

3. Dissolution of marriage actions; or

4. Injunction or mandate actions. [IC 33-10.1-2-4]

JURISDICTION - THIRD CLASS CITY NOT A COUNTY SEAT

A city court in a third-class city that is not a county seat and to which IC 33-10.1-2-4 does not apply has concurrent jurisdiction with the circuit court in civil cases where the amount in controversy does not exceed three thousand dollars ($3,000). However, the city court does not have jurisdiction in actions for slander, libel, foreclosure of mortgages on real estate, where the title to real estate is in issue, all matters relating to a decedent's estate, appointment of guardians and all related matters, and actions in equity, nor does the court have original jurisdiction where the principal defendant resides within another city having a city court with a civil jurisdiction. Judgments rendered in the city court, when a certified transcript is filed with the clerk of the circuit court, have the same force as judgments rendered in the circuit court. [IC 33-10.1-2-5]

CITY COURTS - CONCURRENT JURISDICTION

A city court has concurrent jurisdiction with the circuit court in civil cases where the amount in controversy does not exceed five hundred dollars ($500). However, the city court does not have jurisdiction in actions for slander, libel, foreclosure of mortgage on real estate, where the title to real estate is in issue, matters relating to a circuit court. [IC 33-10.1-2-3.1]

TITLE TO LAND DETERMINATION

If in a proceeding in a city court the title to land is put in issue by plea supported by affidavit, or manifestly appears from the proof on trial to be in issue, the court shall, without further proceeding, certify the cause and papers to the circuit or other court having jurisdiction in the county where the cause is being tried. However, if the title to land is put in issue by affidavit or verified pleading, the court shall at once hear and determine whether title is in issue, and if the proof supports the issue, then the cause shall be certified for final determination, including the issue of title. [IC 33-10.1-2-6]

TOWN COURT JURISDICTION

A town court has exclusive jurisdiction of all violations of the ordinances of the town.

A town court also has jurisdiction of all misdemeanors and all infractions. [IC 33-10.1-2-7]

SEAL FOR CITY OR TOWN COURT

The town court judge or city court judge shall provide, at the expense of the town or city, a seal for the court that must contain on the face the words: "(Town or City) Court of _____, Indiana." A description of the seal, together with an impress of it, shall be put on the records of the court. [IC 33-10.1-2-8.1]

ELECTION OF CITY AND TOWN COURT JUDGES

The judge of a city or town court shall be elected under IC 3-10-6 or IC 3-10-7 by the voters of the city or town.

Except as provided in IC 33-10.1-3-1.1(c), the term of office of a judge is four (4) years, beginning at noon on January 1 after election and continuing until a successor is elected and qualified.

In a town that adopts an ordinance under IC 3-10-6-2.6, the term of office of:

1. A judge elected at the next municipal election not conducted in a general election year is one (1) year; and

2. The successors to the judge described in subdivision (1) is four (4) years;

beginning at noon January 1 after election and continuing until a successor is elected and qualified. [IC 33-10.1-3-1.1]

In a town that adopts an ordinance under IC 3-10-7-2.7, the term of office of:

1. A judge elected at the next municipal election not conducted in a general election year is three (3) years; and

2. The successors to the judge described in subdivision (1) is four (4) years;

beginning noon January 1 after election and continuing until a successor is elected and qualified. [IC 33-10.1-3-1.1]

OFFICIAL BOND

Before beginning the duties of office, the judge shall, in the manner prescribed by IC 5-4-1, execute a bond conditioned upon the faithful discharge of the duties of his office. [IC 33-10.1-3-1.1]

NOTE: All employees who handle cash should be covered by some type of bond or crime insurance policy.

ELIGIBILITY - JUDGE 2ND CLASS CITY

To be eligible to hold the office of city court judge, as provided by Article 6, Section 6, of the Constitution of the State of Indiana, the judge must be a resident of the city during the term of office or the office becomes vacant. [IC 33-10.1-3-2]

OATH OF OFFICE - BOND - TOWN COURTS

Before beginning the duties of office, the judge of a town court shall take and subscribe to the same oath of office as judges of circuit courts. The judge shall also execute a bond payable to the town in the penal sum of five thousand dollars ($5,000), conditioned upon the faithful performance of the duties of the judge=s office with good and sufficient surety. The bond must be approved by the legislative body of the town and filed in the office of the town clerk-treasurer. [IC 33-10.1-3-3]

LOCATION OF COURT

A city court judge shall hold regular sessions of the city court at a place to be provided and designated by the legislative body of the city.

A town court judge shall hold sessions of the town court as the business of the court demands at a place to be provided and designated by the legislative body of the town. [IC 33-10.1-4-1]

COMPENSATION - JUDGES

A city court judge may not receive any fees or compensation other than the judge=s salary, as established by the city fiscal body.

A city court judge of each of the three (3) cities having the largest populations in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) is entitled to receive, for additional services that IC 33-10.1 requires to be performed, three thousand five hundred dollars ($3,500) per year in addition to the salary otherwise provided. The fiscal body of the city shall appropriate the money necessary to pay the additional compensation.

A town court judge is entitled to receive the compensation that is prescribed by the fiscal body of the town.

A city court judge is entitled to receive compensation that is prescribed by the fiscal body of the city. [IC 33-10.1-4-2]

CITY COURT JUDGE PROHIBITED FROM AIDING APPLICANTS FOR LIQUOR LICENSES

A city court judge may not act as attorney, agent, or counsel for the applicant in a proceeding to procure a license to retail or wholesale intoxicating liquors under IC 7.1 or aid or assist in any manner in the procuring of such a license. A person who recklessly violates this section commits a Class B misdemeanor. [IC 33-10.1-4-3]

PERSONNEL, EXPENSES AND COSTS

Officers of City and Town Courts

The officers of a city court are a judge, a clerk, and a bailiff. However, in third class cities, the judge may act as clerk and perform all duties of the clerk of the court or appoint a clerk of the court. If the judge does not act as clerk of the court or appoint a clerk of the court, the city clerk elected under IC 36-4-10 shall perform the duties of the clerk of the city court. The clerk is an officer of the town court. The judge of a town court may act as clerk and perform all the duties of the clerk of the court or appoint a clerk of the court. If the judge does not act as a clerk of the court or appoint a clerk of the court, the town clerk-treasurer elected under IC 36-5-6-4 shall perform the duties of the clerk of the court. The clerk and bailiff may not receive any fees or compensation other then their respective salaries [IC 33-10.1-6-1.1].

Duties of Court Clerk

In second class cities, the city clerk is the clerk of the city court. The city clerk of a third class city is the clerk of the city court if the judge does not serve as clerk or appoint a clerk under IC 33-10.6-1.1. A city clerk of a second or third class city or an appointed clerk in a third class city who serves as clerk of the city court shall give bond. The clerk may administer oaths. The clerk of a city or town court shall:

1. Issue all process of the court, affix the seal of the court to it, and attest it;

2. Keep a complete record and docket of all cases, showing what persons were arrested and brought before the court, how the cases were disposed of, and giving an account of the fees, fines, penalties, forfeitures, judgments, executions, decrees, and orders in the same manner, as nearly as may be, as such records are kept by the clerk of the circuit court; and

3. Collect all fees, fines, penalties and forfeitures, judgments, executions, and money accruing to the city or town from the enforcement of ordinances.

At the close of each week the clerk shall make out and deliver to the city controller a written report of all cases in which the clerk has received or collected any fines or forfeitures due the city or town. The clerk shall then pay over the money to the controller and take a receipt for them. At the end of each month the clerk shall make out and deliver to the county treasurer of the county in which the city or town is located a written report of all cases in which the clerk has received or collected any fines or forfeitures due the state during the month and then pay to the county treasurer all fines or forfeitures collected, taking a receipt for them. In those cities where the county treasurer rather than the city controller receives city money for deposit, the clerk shall report and deliver the money to the county treasurer.

The clerk shall deposit all court costs collected by the clerk in accordance with IC 33-19-1-3. The clerk shall distribute the state and county share of court costs collected in accordance with IC 33-19-7-4. [IC 33-10.1-6-2]

City Court Bailiff

The bailiff of a city court must be a police officer of the city assigned to the court by the chief of police, under direction of the board of public safety. However, the judge of the city court may appoint another person to serve as bailiff. The bailiff shall give bond payable to the city in the penal sum of one thousand dollars ($1,000), with surety to be approved by the mayor, conditioned on the faithful and honest discharge of his duties. The bond shall be filed in the office of the controller or clerk-treasurer. The bailiff:

1. Shall be present at the sessions of the court, maintaining order and performing all other duties subject to the order of the court;

2. Shall take charge of all executions issued by the court and see to the collection of them;

3. Shall keep, in books to be furnished him by the controller or clerk-treasurer, an accurate account and docket of all executions that come into his hands, showing the names of the defendants, date and number of the execution, amount of fines, fees, or penalties imposed, and the disposition of the execution; and

4. Shall make out and deliver a written report to the clerk of the court, or to the judge acting as clerk, on Tuesday of each week, showing all money collected by him during the previous week, giving the names of the defendants, number of executions, amount of fines, and fees, or penalties collected, and then pay the money to the clerk, or judge acting as clerk, taking his receipt for them.

The salary of the bailiff of the court shall be fixed as salaries of other police officers are fixed.

The bailiff of a city court of the three (3) cities having the largest populations in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) shall be appointed by the judge of the court. The bailiff shall serve and execute all processes issued by the court and is entitled to receive a salary fixed by the common council of the city. In addition, the bailiff may collect a fee from the defendant for his own use on all execution sales of property under an execution or attachment as follows:

1. On the first fifty dollars ($50), ten percent (10%).

2. Between fifty dollars ($50) and three hundred dollars ($300), five percent (5%).

3. On all sums over three hundred dollars ($300), three percent (3%).

4. Any additional sum necessarily expended by him in collecting the judgment.

A bailiff may use his private vehicle in the performance of his duties and is entitled to receive a sum for mileage equal to the sum paid per mile to state officers and employees. The payment to the bailiff is subject to the approval of the judge. The judge shall include in the budget for the court sufficient money to provide for the anticipated claims of the bailiff. The common council shall make annual appropriations that are necessary to carry out IC 33-10.1-6-3(b).

Service of Process - Town Court

The town marshal or a deputy marshal shall serve all process issuing from the town court. [IC 33-10.1-6-4]

City Court Referee

The common council of a city having a city court may create the position of city court referee to assist the city court judge in the administration of his duties and the disposition of those matters pending in the court. The common council may authorize more than one (1) referee. After authorization is granted, the judge shall appoint one or more referees. The referee or referees serve at the pleasure of the judge.

A referee shall take the same oath of office as provided for the judge and must have the same qualifications for office as required for the judge. A referee may administer oaths in the performance of his duty and use the seal of the court. In all cases coming before him the referee shall comply with the requirements of procedure provided for the hearing of cases by the court. He shall make a return of his findings and recommendations in writing to the court, which shall proceed to enter the court, judgment, or decree that it considers proper.

The salary of a referee shall be fixed by the judge subject to the approval of the common council of the city. The common council shall appropriate sufficient money to pay the referee. [IC 33-10.1-6-5]

Prosecution of Violations of Statutes and Ordinances

The prosecuting attorney of the judicial circuit in which the city is located shall prosecute all cases in a city court for violation of statutes. The city attorney shall prosecute all cases of violations of the ordinances of the city. [IC 33-10.1-6-6]

Forms and Records - Judge to Provide

A judge of a city or town court shall provide, at the expense of the city or town, all books, dockets, papers, and printed blanks necessary for the discharge of the duties of the court. [IC 33-10.1-6-7]

Court Costs in Lake County

A clerk of a city court in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) shall deposit all court costs collected by the clerk in accordance with IC 33-19-1-3. The fees received by the controller from the clerk shall be paid into the city treasury at the time of the semiannual settlement for city revenue.

If the party instituting an action or proceeding recovers judgment, the judgment must also include as costs an amount equal to the small claims costs fee prescribed under IC 33-19-5-5.

Money paid in advance for costs remaining unexpended at the time an action or proceeding is terminated, whether by reason of dismissal or otherwise, shall be returned to the party or parties making payment. However, this does not apply to civil actions or proceedings instituted by or on behalf of the state or any of its political subdivisions. [IC 33-10.1-6-10]

RECORDS, PROCEDURES AND PRACTICE

Court Rules, Change of Venue, Issuance of Warrants

City courts are governed by the laws and rules governing the practice, pleading, and processes in circuit courts. [IC 33-10.1-5-1]

A change of venue may not be taken from a city or town court, but any defendant may take a change of venue from the judge of the court, with a special judge appointed as provided for the circuit court. [IC 33-10.1-5-2]

All warrants or other processes issued by the city court shall be directed to the chief of police of the city or any person specially deputized by the city court and shall be executed, served, and returned by the chief, by any police officer of the city, or by the specially deputized person. The members of the police force of the city shall cause all persons arrested by them for a violation of any law to be taken before the city court for trial or examination. [IC 33-10.1-5-3]

East Chicago, Gary, and Hammond Courts - Civil Records

City courts of the three (3) cities having the largest populations in counties having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) shall keep the following books of record on the civil side of the court:

1. A loose-leaf minute book, similar to that kept by the circuit court, each case to be numbered consecutively in order of its filing.

2. Index and cross-index book, containing the names of all parties to each action with the number of the case opposite the name.

3. A fee book as is provided for city courts.

4. An order book in which all orders of a cause shall be written consecutively when final judgment or order is entered.

The cause should bear the same number as originally given the case when filed and shall be arranged in the order book consecutively according to the original number given the case when filed. All orders, proceedings, records of issuing execution, returns of execution, and satisfactions of execution shall be grouped together, if practical, on one (1) page or consecutive pages where there is not sufficient room to group it on one (1) page. All costs in a cause shall be taxed on the margin of the page containing the final order or judgment. All orders not connected with a specific case, such as general appointments made by the judge, shall be entered in the minute book under a separate number and recorded in the record book under that number. [IC 33-10.1-5-4]

Trial By Jury

All issues of fact pending in city courts shall be tried by the judge, unless either party demands a jury trial. The jury must consist of six (6) qualified voters of the city, to be summoned by the bailiff by venire issued by the judge. [IC 33-10.1-5-5]

Style of City or Town Court

The style of the city or town court is "The (city or town) Court of _____," according to the name of the city or town. [IC 33-10.1-5-6]

Attorney Status - Judges of Certain Courts

A city court is not a court of record.

A town court is not a court of record.

A person selected as judge of the following courts must be an attorney in good standing under the requirements of the supreme court:

1. Anderson city court.
2. Avon town court. (January 1, 2004)
3. Brownsburg town court.
4. Carmel city court.
5. A city or town court located in Lake County.
6. Muncie city court.
7. Noblesville city court.
8. Plainfield town court.

[IC 33-10.1-5-7]

APPEAL FROM CITY COURT AND TOWN COURT

An appeal from a judgment of a city court may be taken to the circuit or superior court of the county and tried de novo.

An appeal from a judgment of a town court may be taken to the superior or circuit court of the county within thirty (30) days from the rendition of the judgment. [IC 33-10.1-5-9]

NOTE: TRIAL DE NOVO RULES 1, 2, and 3 require city and town courts receiving such appeals to vacate judgments within 15 days of the entry of the judgment. All court costs collected by a city or town court in a trial de novo case shall be retained. Any judgments or fines collected shall be sent to the clerk of the circuit court.

APPEAL BY PRISONER

A prisoner against whom punishment is adjudged by a city court may appeal to the circuit court of the county, within thirty (30) days after the judgment. If the prisoner, within the thirty (30) days, enters into recognizance for his appearance in court and causes to be filed in the court, within forty-five (45) days, all other papers, documents, and transcripts necessary to complete his appeal, then the appeal stays all further proceedings on the judgment in the court below. However, the prisoner may remain in jail on his sentence instead of furnishing a recognizance and an appeal within recognizance does not stay the execution of the court below. [IC 33-10.1-5-9]

APPEAL IN CIVIL ACTION - BOND - CHANGE OF VENUE

A party in a civil action who desires to take an appeal from the city court of a second-class city in a county having three (3) or more second-class cities shall file a bond, to the approval of the city court, within thirty (30) days from the date of rendition of final judgment, and the motion to correct errors within ten (10) days after the rendition of final judgment. The transcript and motion shall be filed in the court to which the appeal is taken within thirty (30) days after the motion has been signed by the court.

All errors saved shall be reviewed as far as justice warrants, and for that purpose, a complete transcript of all the evidence is not required. An error occurring during the trial, not excepted to at the time, may be made available upon appeal by setting it forth in a motion for a new trial. Upon application within the time fixed, either of the parties to the suit may obtain either a correct statement, to be prepared by the party requesting the signing of the same, of the facts in a narrative from appearing upon the trial and of all questions of law involved in the case and the decisions of the court upon the questions of law, or a correct stenographic report, and the expense of procuring the same shall be paid by the party requesting the same.

The appeal shall be submitted upon the date filed in the court to which the appeal is taken, shall be advanced upon the docket of that court, and shall be determined at the earliest practical date, without any extension of time for filing of briefs, but the court to which appeal is taken may, on application, hear oral arguments.

If judgment is affirmed on appeal, it may be increased by ten percent (10%), if the appeal is found to be frivolous, in addition to any interest that may be allowed.

A change of venue may be taken from the judge to which the cause is appealed as provided by law for taking changes of venue from the judge of the circuit court.

The court to which appeal is taken shall render its opinion in abbreviated form by simply citing the controlling authorities in the case, unless it appears that some new question of practice, procedure, or law is involved that would warrant a more extensive opinion. [IC 33-10.1-5-10]

INFRACTION JUDGMENTS

A judgment of up to ten thousand dollars ($10,000) may be entered for a violation constituting a Class A infraction.

A judgment of up to one thousand dollars ($1,000) may be entered for a violation constituting a Class B infraction.

A judgment of up to five hundred dollars ($500) may be entered for a violation constituting a Class C infraction.

A judgment of up to twenty-five dollars ($25) may be entered for a violation constituting a Class D infraction.

A judgment: (1) Up to the amount requested in the complaint; and (2) Not exceeding any limitation under IC 36-1-3-8; may be entered for an ordinance violation.

A defendant against whom a judgment is entered is liable for costs. Costs are part of the judgment and may not be suspended except under IC 9-30-3-12. Whenever a judgment is entered against a person for the commission of two (2) or more civil violations (infractions or ordinance violations), the court may waive the person's liability for costs for all but one (1) of the violations. This does not apply to judgments entered for violations constituting Class D infractions (seatbelt violations) or Class C infractions for unlawfully parking in a space reserved for a person with a physical disability.

If a judgment is entered for a violation constituting a Class D infraction, or a Class C infraction for unlawfully parking in a space reserved for a person with a physical disability, or if a judgment is entered in favor of the defendant in any case, he is not liable for costs.

If a defendant fails to satisfy a judgment entered against him for the violation of a traffic ordinance or for a traffic infraction by a date fixed by the court, the court may suspend the defendant's driver's license. When a court suspends a person's driver's license, the court shall forward notice of the suspension to the bureau of motor vehicles.

Except for costs, the funds collected as judgments for violations of statutes defining infractions shall be deposited in the state general fund. [IC 34-28-5]

OVERWEIGHT VEHICLE FINES

IC 9-20-18-12 states as follows:

"(a) Except as provided in (b), a person who violates this article commits a Class C infraction.

(b) A violation of a weight limitation in IC 9-20-4, IC 9-20-5, IC 9-20-11, or IC 9-20-7-1 is:

(1) A Class B infraction if the total of all excesses of weight under those limitations is more than five thousand (5,000) pounds but not more than ten thousand (10,000) pounds; and

(2) A Class A infraction if the total of all excesses of weight under those limitations is more than ten thousand (10,000) pounds.

(c) It is a defense to a charge of violating a weight limitation in IC 9-20-4, IC 9-20-5, or IC 9-20-11, that the total of all excesses of weight under those limitations is less than one thousand (1,000) pounds.

(d) The court may suspend the registration of a vehicle used in violating this article for not more than ninety (90) days.

(e) Upon the conviction of a person for a violation of a law regarding the weight limit of vehicles operated upon a highway, the court may recommend suspension of the person=s current chauffeur=s license if the violation was committed knowingly.

(f) Notwithstanding IC 34-28-5-4, funds collected as judgments, except for costs, for violations under subsection (a) or (b) shall be deposited in the state highway fund."

UNCLAIMED MONEY OVER FIVE YEARS OLD

All items that can be legally disbursed should be paid immediately to the person or persons entitled thereto. All fees and funds five or more years old, including old outstanding checks, should be scheduled on forms provided by the Attorney General and paid over to him as required by IC 32-9-8. They should not be allowed to accumulate beyond the five year anniversary date of issue.

ADDITIONAL EXCISE TAX JUDGMENTS

IC 9-18-2-1 states:

"Within sixty (60) days of becoming an Indiana resident, a person must register all motor vehicles owned by the person that:

(1) Are subject to the motor vehicle excise tax under IC 6-6-5; and

(2) Will be operated in Indiana. . . ."

IC 9-18-2-40(b) states: "A person who violates this chapter commits a Class C infraction."

IC 9-18-2-41 states:

"(a) In addition to:

(1) The penalty described under section 40 [IC 9-18-2-40) of this chapter; and

(2) Any judgment assessed under IC 34-28-5 (or IC 34-4-32 before its repeal);

a person who violates section 1 [IC 9-18-2-1] of this chapter shall be assessed a judgment equal to the amount of excise tax due under IC 6-6-5 on the vehicle involved in the violation.

(b) The clerk of the court shall do the following:

(1) Collect the additional judgment described under subsection (a).

(2) Transfer the additional judgment to the county auditor on a calendar year basis.

(c) The auditor shall distribute the judgments described under subsection (b) to law enforcement agencies, including the state police department, responsible for issuing citations to enforce section 1 [IC 9-18-2-1] of this chapter.

(d) The percentage of funds distributed to a law enforcement agency under subsection (c):

(1) Must equal the percentage of the total number of citations issued by the law enforcement agency for the purpose of enforcing section 1 of this chapter during the applicable year; and

(2) May be used for the following:

(A) Any law enforcement purpose.

(B) Contributions to the pension fund of the law enforcement agency."

To facilitate the handling and allocation of these fees under IC 9-18-2-41, the clerk should use General Form No. 367 (1984) entitled "Clerk's Report to Auditor of Additional Judgments for Excise Tax" (see copy of this form on Page 5-23). In using this form, the following procedure should be observed:

The clerk of the court which collects these penalties must include a memorandum with the remittance which shows the number of citations filed in the court by each law enforcement agency for failure to timely register a motor vehicle. Such memorandum could be as follows:

Law Enforcement Agency	Number of Citations
_____ County Sheriff	6
Urban City Police	2
Best Town Marshal	2
Total	10

DEPOSIT OF FUNDS

All funds collected by a city or town court shall be deposited not later than the 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. [IC 5-13-6-1(d)]

All funds should be deposited in the same form in which they were received.

MONTHLY RECONCILEMENTS

Financial records of a city or town court shall be reconciled with the balance statements provided by the respective depository (or depositories) at least monthly. [IC 5-13-6-1(e)]

FINES

All fines assessed shall be in amounts set out in state statutes or local ordinances. Fines assessed for violations of state statutes shall be sent to the County Auditor for deposit in the state general fund. All fines collected for violations of local ordinances shall be sent to the fiscal officer of the municipal corporation that adopted the ordinances which were violated.

FISH AND WILDLIFE PENALTIES

Hunting or fishing violations under IC 14-22 can be either misdemeanor or felonies as set out in IC 14-22-38. Any fines assessed by a city or town court for violations of IC 14-22 are in addition to court costs.

A city or town court collecting such fines shall receipt the fines into the Register of Trust Funds and then remit the fines directly to the Department of Natural Resources.

CREDIT CARDS

IC 36-1-8-11 allows political subdivisions to accept payment by several financial instruments that the fiscal body authorizes. These instruments include cash, check, bank draft, money order, bank or credit card, and electronic funds transfer.

It is our audit position that a city or town court could accept bank or credit cards as long as the city or town council authorized such instrument.

If a court accepts bank or credit cards in payment of court costs and fees, the cost of such service must be paid from appropriated funds.

ADULT PROBATION

Whenever it places a person on probation, the court shall: (1) specify in the record the conditions of the probation; and (2) advise the person that if the person violates a condition of probation during the probationary period, a petition to revoke probation may be filed before the earlier of the following: (A) One (1) year after the termination of probation. (B) Forty-five (45) days after the state receives notice of the violation.

In addition, if the person was convicted of a felony and is placed on probation, the court shall order the person to pay to the probation department the user=s fee prescribed under IC 35-38-2-1(c). If the person was convicted of a misdemeanor, the court may order the person to pay the user=s fee prescribed under IC 35-38-2-1(d). The court may: (1) modify the conditions (except a fee payment under IC 35-38-2-1(c)); or (2) terminate the probation; and at any time. If the person commits an additional crime, the court may revoke the probation.

In addition to any other conditions of probation, the court shall order each person convicted of a felony to pay: (1) not less than twenty-five dollars ($25) nor more than one hundred dollars ($100) as an initial probation user=s fee; (2) a monthly probation user=s fee of not less than five dollars ($5) nor more than fifteen dollars ($15) for each month that the person remains on probation; (3) the costs of the laboratory test or series of tests to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV) if such tests are required by the court under IC 35-38-2-2.3; and (4) an alcohol abuse deterrent fee and a medical fee set by the court under IC 9-30-9-8, if the court has referred the defendant to an alcohol abuse deterrent program; to the probation department.

In addition to any other conditions of probation, the court may order each person convicted of a misdemeanor to pay: (1) nor more than a fifty dollar ($50) initial problem user=s fee; (2) not more than a ten dollar ($10) monthly probation user=s fee for each month that the person remains on probation; and (3) the costs of the laboratory test or series of tests to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV) if such tests are required by the court under IC 35-38-2-2.3; to the probation department.

All money collected by the probation department of a city or town court shall be transferred to the fiscal officer of the city or town. The fiscal officer shall deposit the money into the local supplemental adult probation services fund. The fiscal body of the city or town shall appropriate money from the local supplemental adult probation services fund to the city or town court of the city or town for the court=s use in providing probation services to adults. Money may be appropriated only to those city or town courts that have an adult probation services program. If a city or town court does not have such a program, the money collected by the probation department must be transferred to the county treasurer.

The local supplemental adult probation services fund may be used only to supplement probation services and to increase salaries for probation officers. A supplemental probation services fund may not be used to replace other funding of probation services. Any money remaining in the fund at the end of the year does not revert to any other fund but continues in the local supplemental adult probation services fund.

A person placed on probation for more than one (1) crime may not be required to pay more than: (1) one (1) initial probation user=s fee; and (2) one (1) monthly probation user=s fee per month; to the probation department.

In a city or town located in Elkhart County, any money remaining in the local supplemental adult probation services fund at the end of the local fiscal year may be appropriated by the city or town fiscal body to the city or town court for use by the court for purposes determined by the fiscal body. [IC 35-38-2-1]

OLD OUTSTANDING CHECKS NOT RETURNED

In order to eliminate old outstanding checks from the records, the court should perform the following:

1. Issue a formal stop payment order to the bank upon which each check is drawn.

2. Enter the amount of each check as a receipt in the cash book. Post the respective amounts to the trust column of the cash book and enter each amount in the name of the payee in the register of trust funds.

3. Since the checks have never cleared the bank, the amount is still on deposit. Therefore, when all such checks are charged to the records and reinstated in the trust register, the original check number will be eliminated as outstanding in the next reconcilement with the bank.

4. If, at the time such checks are restored to the records, the original dates indicate the checks have been outstanding for five or more years, they should be paid over to the Attorney General immediately. The original date should be shown in the register of trust funds. If the checks are not five years old they should be held until the five year period has elapsed.

The entry in the cash book should be:

"Old Outstanding Check No. _____ issued _____ Date _____, to _____ (Name) _____," and extend the amounts to the total and trust fund columns.

Since outstanding checks of the court are not included within the meaning of IC 5-11-10.5, city and town courts are to follow the preceding steps in handling old outstanding checks.

PETTY CASH FUND

As provided by IC 36-1-8-3, the fiscal body of a political subdivision may 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 is 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.

CASH CHANGE FUND

The establishment of cash change fund is recommended for each department of a city or town 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 collected 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.

COMPUTER OUTPUT

Public records, financial statement information and supporting information generated through a computer system should be printed out on paper, printed to disk or maintained on line at the end of each reporting year and retained for audit. Information must be maintained in a manner that will allow access for audit and public inquiry on equipment of the governmental unit.

CONDITION OF RECORDS

At all times, the manual and computerized records, subsidiary ledgers, control ledger, and reconciled bank balance should agree. If the reconciled bank balance is less than the subsidiary or control ledgers, then the responsible official or employee may be held personally responsible for the amount needed to balance the fund.

INVESTMENT OF COSTS AND FEES DUE STATE

The State's portion of court costs, along with the State fees which are sent directly to the Auditor of State, may be invested by the Court Clerk while awaiting transmittal to the State. Such investments would be limited to those permitted under IC 5-13-9.

The interest earned should be receipted to the city or town general fund. Since the city or town court budget is a department within the general fund budget, it is possible that (with common council or town council approval) the interest income generated could be taken into consideration when reviewing the court's requirements during the annual budget process.

REFUNDS, NSF CHECKS, PARTIAL PAYMENTS

Each court should establish written guidelines on how to handle refunds and NSF checks. Such policy should also address whether the court will accept partial payments of the court costs, fines, and fees which are due.

AUDIT COSTS

Audit costs incurred because of theft and shortage may be the personal obligation of the responsible official or employee.

Audit costs or other costs incurred because of poor records, nonexistent records or other inadequate bookkeeping practices may be the personal obligation of the responsible official or employee of the governmental unit.

Any outside audit costs paid, not authorized by statue, may be considered a duplication of service and an unnecessary expense. These payments may be the personal obligation of the responsible official or employee.

INTERNAL CONTROLS

Governmental units should have internal controls in effect which provide reasonable assurance regarding the reliability of financial information and records, effectiveness and efficiency of operations, proper execution of management's objectives, and compliance with laws and regulations. Among other things, segregation of duties, safeguarding controls over cash and all other assets and all forms of information processing are necessary for proper internal control.

Controls over the receipting, disbursing, recording, and accounting for the financial activities are necessary to avoid substantial risk of invalid transactions, inaccurate records and financial statements and incorrect decision making.