

CHAPTER 3 ORGANIZATION OF OFFICE, COMPENSATION AND FEES

SECTION A - ORGANIZATION OF OFFICE

Office Created

The office of county auditor is a constitutional office. The Constitution of Indiana and Indiana law provide for the election of a county auditor in each county of the state at the time of holding a general election. (Art. 6, Sec. 2, Indiana Constitution; IC 36-2-9-2)

Term of Office

The term of office is fixed at four years and no person is eligible to serve the office of county auditor more than eight years in any period of twelve years. (Art. 6, Sec. 2, Indiana Constitution)

Vacancy in Office

A vacancy in the office of county auditor shall be filled by appointment by a caucus of the precinct committeemen of the same political party as the person holding office at the time the vacancy occurred. The appointment shall be for the balance of the unexpired term. This statute also makes provision for the first deputy to fill the vacancy until a successor is appointed. [IC 3-13-7 and IC 3-13-11]

All selections to fill vacancies in county elected offices are appointments pro tempore for the purposes of Article 2, Section 11 of the Indiana Constitution.

Qualifications

No person shall be elected or appointed as a county auditor who is not an elector of the county, nor who has not been an inhabitant thereof during one year next preceding appointment. (Art. 6, Sec. 4, Indiana Constitution)

Each county auditor shall reside within his/her respective county and shall keep his/her respective office therein, and perform such duties, as may be directed by law. (Art. 6, Sec. 6, Indiana Constitution)

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

Office Hours

It shall be the duty of the county auditor to keep his/her office open at the county seat every day of the year except on Sundays and on legal holidays; provided, however, the office may be closed on such days as the county board of commissioners may order in accordance with the custom and practice of the county. Any legal action required to be taken in the office during the time the office is closed can be taken on the next day the office is open. [IC 36-2-9-3 and 36-2-9-4]

The board of commissioners, under the above cited statute, has authority to designate the opening and closing hours of all offices in the court house, subject, however, to the approval of the elected official upon whom the responsibility rests for fulfilling his/her statutory duties and, of course, when not in conflict with an existing statute designating specific hours during which the office must remain open. (OAG No. 37-1955)

Legal Holidays

The following are legal holidays within the State of Indiana for all purposes: New Year's Day, January 1; Martin Luther King, Jr.'s Birthday, the third Monday in January; Abraham Lincoln's Birthday, February 12; George Washington's Birthday, the third Monday in February; Good Friday, a movable feast day; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Columbus Day, the second Monday in October; Election Day, the day of any general, municipal, or primary election; Veterans Day, November 11; Thanksgiving Day, the fourth Thursday in November; Christmas Day, December 25; Sunday, the first day of the week. 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. However, the Governor may shift to another day the observance of a legal holiday, except that Martin Luther King, Jr.'s birthday shall be observed as a holiday on the third Monday in January. (IC 1-1-9-1 and IC 1-1-9-2)

Appointment of Deputies

County auditors may appoint one (1) first or chief deputy, and also may appoint the number of full-time or part-time deputies and other assistants as may, in the judgment of the auditor, be necessary for the proper discharge of the duties imposed by statute [IC 36-2-16-4]; provided, that the number of deputies and other assistants shall be recommended by the board of county commissioners and be fixed by the county council. [IC 36-2-5-3 and 36-2-5-4]

The county auditor shall be liable for the official acts of such deputies. [IC 36-2-16-3]

Qualifications of Deputies

A deputy county auditor is the holder of an office and must have the same qualifications as required of the county auditor. Office assistants who do not take any oath of office and who do not possess the authority to perform the official duties of a county auditor are employees rather than officers. (OAG No. 2-1970)

Oath of Office

Every county auditor, before entering on his/her official duties, shall take an oath of office to support the Constitution of the United States and of this state, and that he/she will faithfully discharge the duties of such office. [IC 5-4-1-1]

An individual appointed as a deputy of a political subdivision is considered an employee of the political subdivision performing ministerial functions on behalf of an officer and is not required to take the oath. However, if a chief deputy assumes the duties of an office during a vacancy under IC 3-13-1-12, the chief deputy must take the oath before entering on the official duties of the office. (IC 5-4-1-1)

An individual elected to an office of a political subdivision may take the oath at any time after the individual's election. An individual elected to an office of a political subdivision must take the oath and deposit the oath not later than thirty (30) days after the beginning of the term of office. If an individual elected to an office of a political subdivision does not comply with this, the office becomes vacant.

Such oath shall be endorsed on the commission or certificate, signed by him, and certified to by the officer before whom the same was taken, who shall also deliver to such person a certified copy of same. [IC 5-4-1-2] The certified copy of such oath shall be deposited with the clerk of the circuit court of the county. [IC 5-4-1-4]

Official Bonds

The county auditor, shall, before the commencement of his/her term of office, execute an official bond, to be approved by the board of county commissioners, in the penal sum of not less than fifteen thousand dollars (\$15,000.00), as fixed by the county council. The county council may, by ordinance, authorize a blanket bond or a crime insurance policy endorsed to include faithful performance to cover the county auditor. [IC 5-4-1-8 and 5-4-1-18]

It is permissible and recommended but not required that deputies and employees be bonded. If bonded, coverage may be by either individual bonds or blanket bonds, or a crime insurance policy endorsed to cover the faithful performance of duties as determined by the county council. The amounts and surety on this bond(s) shall be approved by the county auditor. [IC 5-4-1-15.1]

All official bonds shall be payable to the State of Indiana, shall be conditioned upon the faithful performance of duties, and shall be procured from a surety company authorized by law to transact business in this State. [IC 5-4-1-10; 5-4-5-1]

Official bonds shall be filed and recorded in the office of the county recorder. [IC 5-4-1-5.1]

Lucrative Character of Office

A county auditor is the holder of a lucrative office and, as such, is prohibited from holding any other lucrative office at the same time. (Art. 2, Sec. 9, Indiana Constitution)

No person holding a lucrative office shall serve as a notary public and acceptance of any such office shall vacate his/her appointment as a notary. [IC 33-16-2-7]

For purposes of Article 2, Section 9 of the Constitution of the State of Indiana, the position of appointed deputy of an officer of a political subdivision or a judicial circuit is not a lucrative office.

The acceptance of a second lucrative office, in violation of the constitutional provision, automatically vacates the office occupied at the time of such acceptance. (OAG 1935, page 333; Bishop v. State ex rel. Grimer, 149 Ind. 223)

SECTION B - COMPENSATION AND FEES

Salary of Auditor, Deputies and Assistants

The provisions of IC 36-2-5-3 authorize the county fiscal body (county council) to fix the compensation of the county auditor, deputies and other employees. A statement (Form 144), showing in detail the amount or rate of compensation proposed for each full-time or part-time position, shall be presented to the county executive (county commissioners) at their July meeting for their review and recommendations. These statements, along with the recommendations of the county executive, shall be presented to the county fiscal body before August 20. [IC 36-2-5-4]

The salary of the county auditor, deputies and other employees is in full for all governmental services and in lieu of all fees; per diems; penalties; costs; interest; forfeitures; percentages; commissions; allowances; and other remuneration. [IC 36-2-7-2]

Mileage and Expense Allowances

County officers are entitled to a sum for mileage in the performance of their official duties in an amount determined by the county fiscal body. [IC 36-2-7-3; 36-2-7-7]

Reimbursed mileage shall not include travel to and from the officer's or employee's home and the governmental office in which he/she works. If two or more persons ride in the same motor vehicle, only one mileage reimbursement is allowable.

For attending conferences called by the State Board of Accounts, each county auditor shall be entitled to an allowance for lodging for each night preceding conference attendance in an amount equal to the single room rate, plus subsistence for meals purchased while attending the conference in an amount determined by the fiscal body. However, lodging expense, in the case of a one (1) day conference, shall only be allowed to persons who reside fifty (50) miles or farther from the conference location. If authorized by the state examiner, deputies and assistants attending such conferences may also receive these allowances; provided, that only one mileage shall be allowed to the auditor, deputy or assistant, although transporting more than one of such persons. Also, each official attending shall be allowed, for each mile necessarily traveled in going to and returning from the conference by the most expeditious route, a sum for mileage at a rate determined by the fiscal body. [IC 5-11-14-1]

All payments of mileage and lodging shall be made by the proper disbursing officer in the manner provided by law on a duly verified claim or voucher to which shall be attached the certificate of the state board of accounts showing the number of days attended and the number of miles traveled. All payments shall be made from the general fund from any money not otherwise appropriated and without any previous appropriation being made therefor. [IC 5-11-14-1]

Fees

All fees collected by the county auditor are the property of the county. [IC 36-2-7-2]

The fees to be charged and collected and the accounting for such fees are discussed elsewhere in the manual.