

# THE COUNTY BULLETIN

## And Uniform Compliance Guidelines

### ISSUED BY STATE BOARD OF ACCOUNTS

Vol. No. 432

September 2022

#### **REMINDER OF ORDER OF BUSINESS**

#### **October**

- 10 Columbus Day – Legal Holiday (IC 1-1-9-1)
- 20 Last day to report and make payment of State and County Income Tax withheld in the month of September to the Indiana Department of Revenue.
- 26-28 Auditors Annual Fall Conference
- 31 Last day to file quarterly unemployment compensation report with the Indiana Department of Workforce Development.

#### **November**

- 1 Last day for county auditor to certify to the office of judicial administration the amounts, if any, the county will be providing to the judges salary during the ensuing calendar year. (IC 33-38-5-6(b))
- 10 Last Day for paying second installment of taxes without penalty. Start preparing for settlement of second installment tax collections (IC 6-1.1-37-10)
- 11 Veterans Day – Legal Holiday (IC 1-1-9-1)
- 20 Last day to report and make payment of State and County Income Tax withheld in the month of October to the Indiana Department of Revenue.
- 24 Thanksgiving Day – Legal Holiday (1-1-9-1)

#### **December**

- 1 On or before this date, certify names and addresses of persons who have money due to them for salaries, wages or other reasons to County Treasurer, for determining if such persons owe delinquent taxes. (IC 6-1.1-22-14)
- 20 Last day to report and make payment of State and County Income Tax withheld in the month of November to the Indiana Department of Revenue.
- 25 Christmas Day – Legal Holiday (IC 1-1-9-1)
- 31 Review year-end duties.

Post and close all records completely and promptly.

The Auditor should balance with the Treasurer and verify the amount of cash in the Treasurer's office.

Cash Change Funds issued to any county officer whose term expires must be returned to the County General Fund.

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**RECORDING OF COPIES**

IC 36-2-11 allows for the recording of a copy but requires that the instrument be marked “copy”.

Further, IC 36-2-11-16(e) and (f) state:

“(e) The recorder shall record a document presented for recording or a copy produced by a photographic process of the document presented for recording if:

(1) the document complies with other statutory recording requirements; and

(2) the document or copy will produce a clear and unobstructed copy.

(f) An instrument, document, or copy received and recorded by a county recorder is conclusively presumed to comply with this section. A recorded copy shall have the same effect as if the original document had been recorded.”

In many instances, it is very difficult to distinguish between a copy and an original. After a copy of a document is photocopied, it is virtually impossible to tell whether an original or a copy was photocopied. For this reason, prior to recording the copy of the document, it should be clearly marked “Copy.” If the person who presents the copy for recording does not want the word “Copy” written on the document, one way this could be handled is to write “Copy” on a self-stick removable note, place the self-stick removable note on the copy, photograph the copy, and then remove the self-stick removable note.

**SOIL AND WATER CONSERVATION DISTRICT EXPENSE**

In the past there has been some confusion over whether the county should pay the expenses of soil and water conservation districts. IC 14-32-4-18 provides that an employee of the district is considered a county employee and permits payment of salaries and fringe benefits of soil and water conservation district employees. However, an employee of a district whose position is funded entirely from sources outside the county in which the employee works solely on the basis of the funding of the employee’s position is not considered an employee of the county. Except as stated in IC 14-32-5-8, all other operating expenses are to be paid by the district.

IC 14-32-5-8 states, “The fiscal body of each county that contains a district in whole or in part may (our emphasis) appropriate money for the use of the district serving the county from which the appropriation is to be made.”

County auditors are not to pay claims of any kind for soil and water conservation districts except payroll and fringe benefit claims (IC 14-32-4-18) and claims as per IC 14-32-5-8 provided in the appropriation by the county council.

**RETAINAGE ON PUBLIC CONTRACTS IN EXCESS OF \$200,000 AND PERFORMANCE BOND**

Pursuant to IC 36-1-12-14, it is required that when public works contracts are awarded by a county for certain public works or improvements and such contracts exceed \$200,000, such contracts shall include provisions for the retainage of portions of payments by the board (defined to mean the board or officer of a political subdivision or agency having the power to award contracts for public work) to contractors, by contractors to subcontractors, and for the payment of subcontractors. This statute applies to the construction, alteration, or repair of all buildings or other improvements the cost of which is paid from public funds or from special assessments imposed and levied on real estate, land and lots benefited thereby but shall not include

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**RETAINAGE ON PUBLIC CONTRACTS IN EXCESS OF \$200,000 AND  
PERFORMANCE BOND (Continued)**

highways, roads, streets, alleys, bridges and appurtenant structures situated on streets, alleys and dedicated highway right-of way.

At the discretion of the contractor, the retainage shall be held by the board or shall be placed in an escrow account with a bank, savings and loan institution, or the state as escrow agent. The escrow agent shall select by mutual agreement between the board and contractor or contractor and subcontractor under a written agreement among the bank or savings and loan institution and (1) the board and the contractor; or (2) the subcontractor and the contractor.

Where an escrow agent is selected, it is required that at the time any retainage is withheld the amount of the retainage shall be placed in an escrow account with the escrow agent, to be promptly invested by the escrow agent in its discretion. The escrowed principal and the income from the investments shall be held by the escrow agent until receipt of a notice releasing the funds in accordance with the terms of the law and the agreement.

When a bank or savings and loan institution is selected as escrow agent, the amount of the retainage withheld shall be paid by warrant to the escrow agent and, when paid, shall be treated in the same manner as any other payment on the contract, with the escrow agent being required to deposit, invest and otherwise account for the escrowed principal and interest, in accordance with the law and the terms of the agreement. The escrow account will not be carried on the records of the county.

Statute provides that the escrow agent shall be compensated for its service as the parties may agree in an amount comparable with fees being charged for the handling of escrow accounts of similar size and duration. The fee shall be paid from the escrowed income of the escrowed account.

The escrow agreement must contain the provisions that the escrow agent shall invest all principal in obligations selected by the escrow agent, that the escrow agent shall hold the principle and income until receipt of notice and follow the notices provision of release, and the statutory escrow agent fee provisions.

To determine the amount of retainage to be withheld the board shall:

1. Withhold no more than ten percent (10%) nor less than six percent (6%) of the dollar value of all work satisfactorily completed until the public work is fifty percent (50%) completed and nothing further after that; or
2. Withhold no more than five percent (5%) nor less than three percent (3%) of the dollar value of all work satisfactorily completed until the public work is substantially completed.

If upon substantial completion of the public work minor items remain uncompleted within sixty-one (61) days after the date of substantial completion, an amount equal to two hundred percent (200%) of the value of each item as determined by the architect-engineer shall be withheld until the item is completed.

If the contractor chooses to have the retainage held by the board, then the board is not required to pay interest on the amounts of retainage it holds. However, such amounts held by the board will be carried on the records of the county as an agency fund.

Required warranties begin not later than the date of substantial completion.

Subject to IC 36-1-12-11 and IC 36-1-12-12 and subject to the value of minor items being withheld as stated above, the board or escrow agent shall pay the contractor within 61 days after the date of substantial completion.

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**RETAINAGE ON PUBLIC CONTRACTS IN EXCESS OF \$200,000 AND  
PERFORMANCE BOND (Continued)**

The contractor shall furnish the board with a performance bond equal to the contract price. If acceptable to the board, the performance bond may provide for incremental bonding in the form of multiple or chronological bonds that, when taken as a whole, equal the contract price.

The performance bond must specify that:

- (1) a modification, omission, or addition to the terms and conditions of the public work contract, plans, specifications, drawings, or profile;
- (2) a defect in the public work contract; or
- (3) a defect in the proceedings preliminary to the letting and awarding of the public work contract; does not discharge the surety.

The surety on the performance bond may not be released until one (1) year after the date of the board's final settlement with the contractor.

However, if the public work contract is less than \$250,000, the board may waive the performance bond requirement and accept from the contractor an irrevocable letter of credit. The letter of credit must be for an equivalent amount from an Indiana financial institution approved by the Department of Financial Institutions. Subsections (e) through (g) of IC 36-1-12-14 apply.

**DEATH AND MORTGAGE RELEASE LISTS**

To enable the county to administer the change in filing exemptions the following information is required to be furnished the county auditor:

1. IC 16-37-3-9 (d) states: "The local health officer shall, not later than January 31, April 30, July 31, and October 31 of the year, furnish to the county auditor the records of all deaths within the officer's jurisdiction that occurred during the previous three (3) months."
2. IC 36-2-11-24 states: "The county recorder shall, on or before the 20<sup>th</sup> day of each month, furnish the county auditor a list of the mortgage releases recorded during the prior month. The list shall set forth the full name of the mortgagor, the book and page numbers of the original mortgage, the amount being released, and the date of the release."

We would not take exception during an audit to not providing the list when the mortgage deduction is no longer applicable.

**PAYMENT OF FUNDS DUE DECEASED PERSON IC 29-1-8**

This office is periodically contacted regarding the correct method of making payment of money due an official, employee, or other person who has died. If an executor, administrator, or personal representative has been designated by the court, payment should be made to such executor, administrator or personal representative.

IC 29-1-8-1 states in part:

“(a) Forty-five (45) days after the death of a decedent and upon being presented an affidavit that complies with subsection (b), a person:

(1) indebted to the decedent; or

(2) having possession of personal property or an instrument evidencing a debt, an obligation, a stock, or a chose in action belonging to the decedent; shall make payment of the indebtedness or deliver the personal property or the instrument evidencing a debt, an obligation, a stock, or a chose in action to distributee claiming to be entitled to payment or delivery of property of the decedent...

(b) The affidavit required by subsection (a) must be an affidavit made by or on behalf of the claimant and must state the following:

(1) That the value of the gross probate estate, wherever located (less liens and encumbrances), does not exceed:

(A) twenty-five thousand dollars (\$25,000), for the estate of an individual who dies before July 1, 2006;

(B) fifty thousand dollars (\$50,000), for the estate of an individual who dies after June 30, 2006, and before July 1, 2022; and

(C) one hundred thousand dollars (\$100,000), for the estate of an individual who dies after June 30, 2022.

(2) That forty-five (45) days have elapsed since the death of the decedent.

(3) That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction.

(4) The name and address of each distributee that is entitled to a share of the property and the part of the property to which each distributee is entitled.

(5) That the affiant has notified each distributee identified in the affidavit of the affiant's intention to present an affidavit under this section.

(6) That the affiant is entitled to payment or delivery of the property on behalf of each distributee identified in the affidavit.”

Following is a suggested format for an affidavit for transfer of assets without administration. Since this is a legal question and there are statutory changes over time, please discuss this article and the suggested affidavit with your legal counsel.

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**PAYMENT OF FUNDS DUE DECEASED PERSON - (Continued)**

The affidavit furnished should be similar to the following:

STATE OF INDIANA ) SS:  
COUNTY \_\_\_\_\_ )

**AFFIDAVIT FOR TRANSFER OF ASSETS  
WITHOUT ADMINISTRATION**

\_\_\_\_\_, being first duly sworn upon \_\_\_\_\_ oath deposes and says:

1. That \_\_\_\_\_ died on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
(testate), (intestate) while domiciled in \_\_\_\_\_ County, Indiana.
2. That no application or petition for the appointment of a personal representative of his estate is pending or has been granted in any jurisdiction.
3. That forty- five (45) days have elapsed since the death of said decedent.
4. The value of the gross probate estate less liens and encumbrances thereon does not exceed fifty thousand dollars (\$50,000).
5. The name and address of each other person that is entitled to a share of the property and the part of the property to which each person is entitled is listed below.

NAME	ADDRESS	PART OF PROPERTY ENTITLED
_____	_____	_____
_____	_____	_____

6. The affiant has notified each person identified in the affidavit of the affiant's intention to present an affidavit
7. That this affiant is a (widow) (widower) (distributee) of said decedent and is entitled to receive without administration the following listed property from the person, firm or corporation listed opposite said property subject to the liens and encumbrances thereon.

KIND OF PROPERTY	WHERE LOCATED	VAULE	LIEN OR ENCUMBRANCES IF ANY	NAME AND ADDRESS OF PERSON, FIRM OR CORPORATION HOLDING PROPERTY OF DECEDENT
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

This affidavit is made for the purpose of inducing the above named holders of said decedent's property to turn said property over to this affiant as provided by law.

\_\_\_\_\_  
AFFIANT  
\_\_\_\_\_  
ADDRESS

Subscribed and Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
Notary Public\*

County of Residence \_\_\_\_\_  
My commission expires \_\_\_\_\_

### **LUCRATIVE OFFICES**

We are frequently asked about lucrative or dual office holdings. These questions should be directed to your county attorney. On the Attorney General's website there is a guide that provides a four part analysis that may be used in determining whether or not holding a second public service position violates the law. The four questions are:

1. Are both positions lucrative offices within the meaning of Indiana Constitution Article II, Section 9?
2. Would holding both positions violate the constitutional doctrine of "separation of powers" under Indiana Constitution Article III, Section 1?
3. Are the positions incompatible and would holding both create a conflict of interest or a public policy concern?
4. Does a federal, state or local law or regulation prohibit the simultaneous holding of both offices?

The guide provides in depth information that addresses these four parts as well as providing other information such as attorney generals' opinions and case law that address the question of dual office holding for various positions.

### **SPREADSHEET SOFTWARE UTILIZATION GENERATING EXACT REPLICAS OF PRESCRIBED FORMS**

The Indiana State Board of Accounts prescribes the forms to be utilized in accounting systems but does not specify the source from which the prescribed forms must be obtained. With the current capabilities of spreadsheet software, the use of spreadsheet software may, in some instances, be an acceptable method of generating exact replicas of prescribed forms.

Spreadsheet may not be utilized to replace functionality that should be an integral function of a computerized accounting system or replace a controlled document for the entry of accounting information. Examples of this type of form include forms that are required to be either prenumbered by an outside printing supplier or numbered by the accounting system with sufficient controls to prevent unauthorized generation of the form or duplication of control numbers on the forms. These forms include receipts, checks, purchase orders and material receiving documents. In addition, spreadsheets should not be utilized to generate control documents such as ledgers, receipt registers, check registers, outstanding check list and similar reports. Under no circumstances is it acceptable to implement an electronic interface from spreadsheet software directly to the information files of an accounting system without being processed through the same edit and control features as are utilized to ensure the accuracy of information entered manually into the accounting system.

Exact replicas of prescribed forms generated by spreadsheet software may be utilized for forms incidental to the computerized accounting system. Examples of these forms include travel vouchers, attendance records, and fixed asset records.

If you have any questions on the utilization of spreadsheet software to replicate a specific prescribed form, please contact our Information Technology Services department at (317) 232-8617.

### **GHOST EMPLOYMENT**

We receive calls and emails all the time inquiring about ghost employment. IC 35-44.1-1-3 defines what ghost employment is.

The State Board of Accounts recommends that all governmental entities carefully maintain accurate prescribed or approved employment, service and other records for all persons employed so that documentation is available to substantiate all duties assigned and all amounts paid.

### **OFFICIALS' SIGNATURES ON CLAIMS, WARRANTS, AND OTHER OFFICIAL DOCUMENTS**

The State Board of Accounts is often asked to approve the use of rubber stamps or other devices for affixing facsimile signatures of public officials on claims, warrants, and other official documents. The decision as to whether or not the number of documents to be signed justifies the use of a rubber stamp or other device for affixing his/her signature must be made by each official. Since each official is responsible for his/her signature, a rubber stamp or other signing device should be used only under the closest direction of the official and must be properly safeguarded when not in use.

### **SEATBELT VIOLATIONS**

For each seatbelt violation under IC 9-19-10-2, IC 9-19-11-2 and IC 9-19-11-3.6, a person commits a Class D infraction. IC 34-28-5-4 allows a court to enter a judgment of up to twenty-five dollars (\$25) for each Class D infraction. All seatbelt violation cases would be considered moving traffic violations under IC 9-30-3-14 and would be required to be heard in a circuit, superior, county, city or town court or traffic violations bureau designated by these courts. Furthermore, IC 34-28-5-5 (c) states that all funds collected as judgments for violations of statutes defining infractions shall be deposited in the state general fund.

Additionally, in the Home Rule Law IC 36-1-3-8 states that a unit of government does not have the power to prescribe a penalty by local ordinance for conduct constituting an infraction.

### **OPIOID SETTLEMENT FUNDING**

Statute on the opioid litigation and settlements can be found in IC 4-6-15. These funds are settlement funds paid to the state from pharmaceutical companies and should not be confused with federal or state grants. These funds will not be reported on the SEFA and should be maintained in funds that have been created:

- 1237 – Opioid Restricted
- 1238 – Opioid Unrestricted

The restricted portion is controlled by the settlement agreement from the courts while the unrestricted portion may be spent in the same manner as money in the general fund. At this time the reporting requirements have yet to be known but as information becomes available, we will be sure to disseminate.

Please refer to the Attorney General's website ( <https://www.in.gov/attorneygeneral/about-the-office/complex-litigation/opioid-settlement/> ) for information on distribution totals, settlement agreements, and approved opioid abatement (remediation) uses.



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**QUESTIONS FROM THE 2022 ANNUAL TREASURERS CONFERENCE**

**QUESTION 1: Are there any ditch exemptions for a post office?**

**ANSWER 1:** IC 6-1.1-10-1 provides that the Federal property is not taxed unless the US Constitution allows it. IC 36-9-27-86(c)(4) provides that drainage assessments are allowed against State property, local governments, and municipal property, even though those are otherwise exempted in IC 6-1.1-10-2; IC 6-1.1-10-4 and IC 6-1.1-10-5. However, the provisions in IC 36-9-27-86(c)(4) does not list IC 6-1.1-10-1 which is the exemption for federal property. It appears that federal property would not be subject to drainage assessments, and this would be our guidance for audits. Since we cannot provide legal advice, you consult your County Attorney for legal guidance.

**QUESTION 2: Are Cash Management bidding requirements every 2 years? Is it required to update for all accounts (ie; checking, investments, sweeps, etc...)? Indiana Code reference/guidance?**

**ANSWER 2:** IC 5-13-11 is the statute for Investment Cash Management Systems. Section 2 outlines the requirements for the contracts. The contract cannot be longer than two years. All accounts that are covered by the cash management contracted would need to be updated with each contract. It is possible to renew the contract, see IC 5-13-11-2.5.

**QUESTION 3: Land Bank requirements and guidance?**

**ANSWER 3:** IC 36-7-38 is the statute for Land Banks. The statute provides how to establish and operate a Land Bank.

**QUESTION 4: What is the SBOA audit position on who is liable for variances on cash drawers? Indiana Code reference/guidance. Is the Treasurer or the person (whose name is associated with the cash drawer) liable? Who makes this determination?**

**ANSWER 4:** The cash change fund would be issued to the Officer (Treasurer) for use in the office and that officer would be responsible for the cash change fund. If you have County policy that would assign responsibility of the cash drawer to an individual employee in the office, the policy will provide who would have to make the change fund whole if there were a shortage. The statute for cash change funds is IC 36-1-8-2.

**QUESTION 5: Who is responsible for property splits between assessments the Auditor, Treasurer, or Assessor?**

**ANSWER 5:** For taxes that are due before the date of the transfer, those taxes have to be paid before the transfer is entered onto the records. The parties involved in the conveyance would have to work out the taxes between them or as negotiated in the sale documents. After the transfer is entered, the assessor would have to supply the assessed values for each new parcel created by the partition. IC 6-1.1-5-5.5 addresses the split of a large parcel into smaller parcels that are individually billed as taxed.