

CHAPTER 2 ORGANIZATION OF OFFICE

Office Created: The office of county recorder is a constitutional office. The Constitution of Indiana and Indiana statutory law provide for the election of a county recorder in each county of the state at the time of holding general elections. [Article 6, Section 2, Indiana Constitution; IC 36-2-11-2]

Term of Office: The term of office is fixed at four years and no person is eligible to the office of county recorder more than eight years in any period of twelve years. [Article 6, Section 2, Indiana Constitution]

Qualifications: No person shall be elected or appointed as a county recorder who is not an elector of the county, nor who has not been an inhabitant thereof, during one year next preceding his appointment. [Article 6, Section 4, Indiana Constitution]

Each county recorder must reside within his respective county and shall keep his respective office at such place therein, and perform such duties, as directed by law. [Article 6, Section 6, Indiana Constitution]

Oath of Office: Every county recorder, before entering on the officer's official duties, shall take an oath to support the Constitution of the United States and of this state, and that the officer will faithfully discharge the duties of such office. An individual appointed as a deputy is considered an employee of the political subdivisions performing ministerial functions on behalf of an officer and is not required to take the oath of office. However, if a chief deputy assumes the duties of an office during a vacancy under IC 3-13-11-12, the chief deputy must take the oath before entering on the official duties of the office. [IC 5-4-1-1]

Such oath shall be endorsed on, or attached to, the commission or certificate, and signed by the person taking the oath, and certified to by the officer before whom the same was taken, who shall also deliver to such person a certified copy of the same. [IC 5-4-1-2]

The copy of such oath shall be deposited by such person in the office of the Clerk of the Circuit Court. [IC 5-4-1-4]

Official Bond: The recorder may be required to give a bond conditioned for the faithful discharge and performance of his duty. The bond must be given before the commencement of his term of office. If the recorder fails to give the bond before that time, the recorder may not take office. All official bonds shall be payable to the State of Indiana and shall be obligatory to such state, upon the principal and sureties, for the faithful discharge of all duties required of such officer by any law, then or subsequently in force, for the use of any person injured by any breach of the condition thereof. [IC 5-4-1-9; 5-4-1-1]

If authorized by county council, blanket bond coverage for the recorder may be obtained. [IC 5-4-1-18]

The bond shall be executed by the principal and one or more freehold sureties. [IC 5-4-1-13]

The amount of the bond, in all counties, is not less than \$8,500.00. [IC 5-4-1-18] No bond shall be filed until lawfully approved. [IC 5-4-1-8] It is the duty of the board of county commissioners, or a majority of them, to approve the bond; which approval shall be endorsed on the bond by the commissioners, or a majority of them. [IC 5-4-1-8]

The bond shall be filed and recorded in the office of the clerk of the circuit court of the county. The bonds shall be filed within ten (10) days after their approval. [IC 5-4-1-5.1]

The cost of the bond shall be paid out of the general fund of the county. [IC 5-4-5-2]

Office Hours: The recorder shall keep his office open at the county seat, in a building provided by the county commissioners, during regular business hours every day of the year except on Sundays and legal holidays. Provided, however, the office may be closed on such days as the county commissioners may order in accordance with the custom and practice of the county. Any legal action required to be taken in such office during the time the office is closed, pursuant to this act, can be taken on the next following day said office is open. [IC 36-2-11-3; 36-2-11-4]

In Official Opinion No. 36-1955 the Attorney General held that the county board of commissioners would have the authority to designate the opening and closing hours of all offices within the court house, subject, however, to the approval of the elected official upon whom the responsibility rests for fulfilling his statutory duties and, of course, when not in conflict with an existing statute designating specific hours during which the office must remain open.

Legal Holidays Defined: 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; the twelfth day of February, commonly called Lincoln's Birthday; Washington's Birthday, the third Monday in February; the movable feast day of Good Friday; 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; Veterans' Day, November 11; Thanksgiving Day, the fourth Thursday in November; Christmas Day, December 25; the day of any general, national, state or city election or primary; and the first day of the week, commonly called Sunday.

When any of these holidays falls on a Saturday, the preceding Friday shall be observed as the holiday. When any of these holidays, other than Sunday, comes on Sunday, the Monday next succeeding shall be the legal holiday. [IC 1-1-9-1]

Appointment of Deputies: The recorder is entitled to appoint one (1) first or chief deputy, and also may appoint the number of other full-time or part-time deputies and employees authorized by the county fiscal body. [IC 36-2-16-4]

Oath of Deputies: A deputy appointed under this chapter shall take the oath required of the recorder, if required by IC 5-4-1-1 and may perform all the official duties of the recorder, being subject to the same regulations and penalties. [IC 36-2-16-2; 36-2-16-3]

The recorder shall be responsible for all the official acts of the deputy. [IC 5-6-1-3]

Bonds of Deputies: The recorder may require any deputy so appointed to give bond, in such amount as may be prescribed by statute or as may be fixed by the recorder, conditioned for the faithful discharge of all official duties as such deputy. [IC 36-2-16-2] Deputies may also be covered by a faithful performance of duty "blanket bond" pursuant to IC 5-4-1-18.

The bond shall be filed and recorded in the office of the clerk of the circuit court, in the same manner as the bond of the recorder. [IC 5-4-1-5.1]

The cost of such bond shall be paid from the general fund of the county. [IC 5-4-5-2]

Lucrative Office: No person holding a lucrative office or appointment under the United States or under this State, shall be eligible to a seat in the General Assembly; nor shall any person hold more than one lucrative office at the same time, except as expressly permitted in the Constitution of Indiana. [Article 2, Section 9, Indiana Constitution]

No person holding a lucrative office, may serve as a notary public. [IC 33-42-2-7]

A county recorder has been held to hold a lucrative office. [Daily v. State ex rel. Huffer, 8 Black. 329]

In view of the foregoing, the recorder cannot hold another lucrative office at the same time, nor can the recorder act as a notary public while holding the office.

Official Seal: The recorder shall use an official seal in attesting to an instrument when appropriate to seal the instrument. Before the recorder uses his official seal, he shall file the impression of the seal and a verified description of that impression in the office of the clerk of the circuit court, for recording in the order book of that court.

If the recorder has complied with this section, full faith and credit shall be given to his seal without further attestation. [IC 36-2-11-23]

Vacancy in Office: A vacancy in the office of county recorder 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]

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.