

# CITIES AND TOWNS BULLETIN

## AND UNIFORM COMPLIANCE GUIDELINES ISSUED BY STATE BOARD OF ACCOUNTS

MARCH 2018

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### JUNE TRAINING SCHOOL

This year's June Training School will be held in South Bend as part of the Indiana League of Municipal Clerks and Treasurers' Annual Conference during the week of June 11 through June 14, 2018. The Conference and School will be held at the Century Center.

The State Board of Accounts will be conducting two (2) days of training (June 12 and 13) at the Conference which will be State-called meeting days. Please mark these dates on your calendar. An explanatory letter along with a tentative agenda will be sent prior to the meeting.

### REPORT OF MISAPPROPRIATION

Indiana Code 5-11-1-27(l) requires a public officer who has actual knowledge or reasonable cause to believe that there has been a misappropriation of public funds or assets to immediately send a written notice to the state board of accounts and the prosecuting attorney.

Indiana Code 5-11-1-27(l) states:

(l) A public officer who has actual knowledge of or reasonable cause to believe that there has been a misappropriation of public funds or assets of the public office, including:

- (1) information obtained as a result of a police report;
- (2) an internal audit finding; or
- (3) another source indicating that a misappropriation has occurred;

shall immediately send written notice of the misappropriation to the state board of accounts and the prosecuting attorney serving in the area governed by the political subdivision.

The State Examiner Directive 2015-6 also addresses this statute.

The policy must also consider Ind. Code § 5-11-1-27(l), which requires public officials who have actual knowledge of or reasonable cause to believe that there has been a misappropriation of public funds to immediately send written notice of the misappropriation to the State Board of Accounts and the prosecuting attorney. There is no materiality threshold applicable to Ind. Code § 5-11-1-27(l). Thus, whenever a political subdivision has actual knowledge or is reasonably certain that a misappropriation of public funds has occurred (regardless of the dollar amount), the political subdivision must send written notice of the misappropriation to the State Board of Accounts and the local prosecuting attorney. Misappropriation occurs when an employee or in-house contractor of the political subdivision wrongly takes or embezzles public funds. When there is a known misappropriation or embezzlement of public funds by an internal actor, materiality is irrelevant. Indiana law requires the political subdivision to report the activity to the State Board of Accounts and the local prosecutor. Ind. Code § 5-11-1-27(l).

We are finding that the requirements of this statute are not being followed consistently. If a public official fails to report the misappropriation of funds or assets in a timely manner, this will result in a finding in the audit report. This may also result in additional audit costs. Also, be aware that reporting the misappropriation to a law enforcement agency does not fulfill the requirements of the statute. Even when you have notified law enforcement officials, you must still notify the State Board of Accounts and the prosecutor. If there are any concerns on the response the State Board of Accounts will take after a report is received or how they will liaison with the law enforcement investigation, you can contact our Director of Special Investigations, Mark Mahon at (317) 232-2513 or [mmahon@soba.in.gov](mailto:mmahon@soba.in.gov).

**OVERDRAWN FUNDS AND APPROPRIATIONS**

The overdraft of a fund or appropriation of a city or town is prohibited by law. Expenditures are limited to the balance in the particular fund and, in the case of budgeted funds, to the balance of the appropriation therefore. Please see IC 6-1.1-18-4, IC 5-11-10, IC 36-4-8-2 (cities) and IC 36-5-4-2 (towns).

**APPROPRIATION OF INSURANCE CLAIM PROCEEDS – LIMITATIONS**

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

“Notwithstanding the other provisions of this chapter, 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, they 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.

**BARRETT LAW FUNDS**

**Custodian:** The Controller or Clerk-Treasurer of a city or town shall collect and disburse Barrett Law funds.

**Official Bond:** IC 36-9-37-7 provides that the collecting and disbursing officer of Barrett Law funds in a city or town shall give a separate official bond in an amount to be fixed by the city or town council of such city or town pursuant to the provisions of IC 5-4-1-18(c). Said bond shall be filed and recorded in the office of the county recorder, as required by IC 5-4-1-5.1.

**Certification of Delinquent Assessments:** Except in a municipality that adopts an ordinance to be exempt from the following, IC 36-9-37-23 and IC 36-9-37-24 provide that the municipal fiscal officer shall certify to the county auditor a list of all delinquent waived and nonwaived assessments. The county auditor shall immediately enter the list in a special duplicate and transmit the list to the county treasurer for collection. Real property on the list is subject to collection by the county treasurer in the same manner as property taxes.

For more information on Barrett Law procedures, please see Chapter 7, Section C of the Accounting and Uniform Compliance Guidelines Manual for Cities and Towns. For an explanation of Barrett Law forms, see Chapter 6, Section E of the Accounting and Uniform Compliance Guidelines Manual for Cities and Towns.

**LOCAL LAW ENFORCEMENT CONTINUING EDUCATION FUND – USES**

Money in the local law enforcement continuing education fund may be used for continuing education and training of law enforcement officers employed by a city or town and for equipment and supplies for law enforcement purposes. [IC 5-2-8-6]

It is our audit position that the local law enforcement continuing education fund will require local council appropriation. Furthermore, if it can be shown that law enforcement officers worked overtime in order for other officers to receive training, the cost of such overtime could also be paid from the fund.

**LEAVE OF ABSENCE – OFFICERS AND EMPLOYEES WHO ARE MEMBERS OF THE INDIANA NATIONAL GUARD OR RESERVES**

All officers and employees of the state or any county, township, municipality, or school corporation in Indiana who are members of the Indiana National Guard, a reserve component, or a member of the retired personnel of the naval, air or ground forces of the United States are entitled to the following leaves absence.

A member is entitled to receive from the member's employer a leave of absence from the member's respective duties in addition to regular vacation period without loss of time or pay from the time that the member is:

1. on training duties of the state under the order of the governor as commander in chief; or
2. a member of any reserve component under the order of the reserve component authority;

for any consecutive or nonconsecutive period that does not exceed a total of fifteen (15) days in any calendar year. The entitlement to a leave of absence without loss of time or pay provided is not at the discretion of the member's employer.

A member is entitled to receive from the member's employer a leave of absence from the member's respective duties in addition to the member's regular vacation period for the total number of days that the member is on active duty under section IC 10-16-7-7. Such leave of provided may be with or without loss of time discretion of the member's employer. [IC 10-16-7-5]

**EMERGENCY MEDICAL SERVICES**

The governing body of a city, town, township, or county by the governing body's action or in any combination may do the following:

1. Establish, operate, and maintain emergency medical services.
2. Levy taxes under and limited by [IC 6-3.6](#) and expend appropriated funds of the political subdivision to pay the costs and expenses of establishing, operating, maintaining, or contracting for emergency medical services.
3. Except as provided in section 2 of this chapter, authorize, franchise, or contract for emergency medical services. However:
  - A. a county may not provide, authorize, or contract for emergency medical services within the limits of any city without the consent of the city; and
  - B. a city or town may not provide, authorize, franchise, or contract for emergency medical services outside the limits of the city or town without the approval of the governing body of the area to be served.

**EMERGENCY MEDICAL SERVICES – Continued**

4. Apply for, receive, and accept gifts, bequests, grants-in-aid, state, federal, and local aid, and other forms of financial assistance for the support of emergency medical services.
5. Establish and provide for the collection of reasonable fees for emergency ambulance services the governing body provides under this chapter.
6. Pay the fees or dues for individual or group membership in any regularly organized volunteer emergency medical services association on their own behalf or on behalf of the emergency medical services personnel serving that unit of government. [IC 16-31-5-1]

A city, town, or county may not adopt an ordinance that restricts a person from providing emergency ambulance services in the city, town, township, or county if:

1. The person is authorized to provide emergency ambulance services in any part of another county; and
2. The person has been requested to provide emergency ambulance services:
  - A. To the county in which the person is authorized to provide emergency ambulance services, and those services will originate in another county; or
  - B. From the county in which the person is authorized to provide emergency ambulance services and those services will terminate in another county. (IC 16-31-5-2)

**OPTICAL IMAGES OF WARRANTS**

IC 5-15-6-3 states in part "...'original records' includes the optical image of a check..."

The State Board of Accounts is of the audit position both sides of a check are part of the original record. Therefore, both sides of an "optical imaged check" should be available for public inspection and audit. Encoding, printing and bank certification should exist to ascertain that the back side of a check is part of a particular check, i.e. endorsements should belong to the front side of a check presented.

**FEDERAL ASSISTANCE – DATA COLLECTION FORM**

Form SF-SAC, Data Collection Form for Reporting on Audits of States, Local Governments, Indian Tribes, Institutions of High Education, and Nonprofit Organizations is required to be filed with the Federal Audit Clearinghouse for all Single audits.

A part of our service, Field Examiners will complete the form at the time of audit. The fiscal officer will need to certify the form. Instructions on the certification process will be provided.

**PARK AND RECREATION BOARDS – SALARIES AND APPROPRIATION TRANSFERS**

The following Official Opinion, No. 89-10, which was issued by the Office of the Attorney General, on May 5, 1989, is still applicable to city and town park and recreation boards created under IC 36-10-3.

“It is, therefore, my Official Opinion that:

1. The Board of Park and Recreation Department may create new positions during the year without the approval of the City Common Council, if the annual appropriation to the Park and Recreation Department for the year is sufficient to compensate persons employed in the new positions.
2. Salaries may be increased without the approval of the City Common Council if the annual appropriation to the Park and Recreation Department for the year is sufficient to pay the increased salaries. The Board of the Park and Recreation Department may pay overtime or compensatory time wages. Vacation pay, sick leave, paid holidays and other similar benefits may be granted only by ordinance of the City Common Council. (emphasis added)
3. and (4) Annual monies appropriated by the City Common Council may be transferred between series 100, 200, and 300 accounts of the Board of the Park and Recreation Department without the consent of the city council. If the annual appropriation to the series 400 capital outlay account includes any appropriation to the special nonreverting capital fund for the purpose of making specific capital improvements, appropriations for payment of bond principal and interest, or funds in the cumulative building fund, the series 400 account may not be transferred and used for a purpose other than those provided by the statutes creating the funds and limiting the use of the funds with or without the consent of the city council. A gift or grant of money deposited in a special non-reverting fund may be used only for the purposes specified by the donor or grantor.”

**LOANS BETWEEN UTILITIES**

IC 8-1.5-3-11(f) authorizes loans between two (2) municipally owned utilities as long as the ordinance establishing a cash reserve fund in utility loaning the money allows for such loans. The loan must be repaid within five (5) years at any interest rate and all repayments, including interest, must be returned to the utility's cash reserve fund.

**LOANS FROM UTILITIES TO CITIES AND TOWNS**

IC 8-1.5-3-12 states that a municipality may, by ordinance of its legislative body, borrow money from a water, gas, or electric utility owned by the municipality for current purposes in anticipation of taxes levied and to be collected during the current or following year or to carry out an eligible efficiency project within the municipality. Eligible efficiency project is defined in IC 36-9-41-1.5.

The board may by resolution lend money to the municipality if the utility has on hand:

1. a surplus of cash exceeding by at least the amount loaned the sum of all amounts required to pay the indebtedness of the utility falling due during the current calendar year and the following year;
2. the amount necessary to meet current expenses during the year; and
3. the amount necessary to pay for improvements contemplated to be made during the current calendar year minus the estimated receipts during the calendar year.

**LOANS FROM UTILITIES TO CITIES AND TOWNS - Continued**

A loan made for current purposes in anticipation of taxes may not be made for a sum in excess of fifty percent (50%) of the amount estimated to be collected from anticipated taxes. The loan:

1. must be evidenced by an obligation of the municipality;
2. must be signed by the executive;
3. is due:
  - (A) on or before thirty (30) days after the last day for the payment of anticipated taxes, in the case of a loan made for current purposes in anticipation of taxes; and
  - (B) on a date determined by the board (but not more than six (6) years after the date of the loan), in the case of a loan made for to carry out an eligible efficiency project; and
4. may bear interest at any rate as determined by the board, payable at maturity.

We recommend that when loans are made from a municipal wastewater (sewage) utility to a municipality, the aforementioned procedures be followed. However, since there are no statutory guidelines included in IC 36-9-23 for such loans, other loan provisions would be acceptable as set out in home rule ordinance adopted under IC 36-1-3

**PAYROLL DEDUCTIONS – PROCEDURES**

Any assignment of the wages of an employee is valid only if all of the following conditions are satisfied:

1. The assignment is:
    - A. in writing;
    - B. signed by the employee personally;
    - C. by its terms revocable at any time by the employee upon written notice to the employer; and
    - D. agreed to in writing by the employer.
  2. An executed copy of the assignment is delivered to the employer within ten (10) days after its execution.
  3. The assignment is made for a purpose described in subsection **(b)**.
- (b)** A wage assignment under this section may be made for the purpose of paying any of the following:
1. Premium on a policy of insurance obtained for the employee by the employer.
  2. Pledge or contribution of the employee to a charitable or nonprofit organization.
  3. Purchase price of bonds or securities, issued or guaranteed by the United States.

**PAYROLL DEDUCTIONS – PROCEDURES - Continued**

4. Purchase price of shares of stock, or fractional interests therein, of the employing company, or of a company owning the majority of the issued and outstanding stock of the employing company, whether purchased from such company, in the open market or otherwise. However, if such shares are to be purchased on installments pursuant to a written purchase agreement, the employee has the right under the purchase agreement at any time before completing purchase of such shares to cancel said agreement and to have repaid promptly the amount of all installment payments which theretofore have been made.
5. Dues to become owing by the employee to a labor organization of which the employee is a member.
6. Purchase price of merchandise, goods, or food offered by the employer and sold to the employee, for the employee's benefit, use, or consumption, at the written request of the employee.
7. Amount of a loan made to the employee by the employer and evidenced by a written instrument executed by the employee subject to the amount limits set forth in section 4(c) of this chapter.
8. Contributions, assessments, or dues of the employee to a hospital service or a surgical or medical expense plan or to an employees' association, trust, or plan existing for the purpose of paying pensions or other benefits to said employee or to others designated by the employee.
9. Payment to any credit union, nonprofit organizations, or associations of employees of such employer organized under any law of this state or of the United States.
10. Payment to any person or organization regulated under the Uniform Consumer Credit Code ([IC 24-4.5](#)) for deposit or credit to the employee's account by electronic transfer or as otherwise designated by the employee.
11. Premiums on policies of insurance and annuities purchased by the employee on the employee's life.
12. The purchase price of shares or fractional interest in shares in one (1) or more mutual funds.
13. A judgment owed by the employee if the payment:
  - (A) is made in accordance with an agreement between the employee and the creditor; and
  - (B) is not a garnishment under [IC 34-25-3](#).
14. The purchase of uniforms and equipment necessary to fulfill the duties of employment. The total amount of wages assigned may not exceed the lesser of:
  - (A) two thousand five hundred dollars (\$2,500) per year; or
  - (B) five percent (5%) of the employee's weekly disposable earnings (as defined in [IC 24-4.5-5-105\(1\)\(a\)](#)).
15. Reimbursement for education or employee skills training. However, a wage assignment may not be made if the education or employee skills training benefits were provided, in whole or in part, through an economic development incentive from any federal, state, or local program.

**PAYROLL DEDUCTIONS – PROCEDURES - Continued**

16. An advance for:
- A. payroll; or
  - B. vacation; pay.
- (c.) The interest rate charged on amounts loaned or advanced to an employee and repaid under subsection (b) may not exceed the bank prime loan interest rate as reported by the Board of Governors of the Federal Reserve System or any successor rate, plus four percent (4%).  
[IC 22-2-6-2]

**OVERPAYMENT OF WAGES – REIMBURSEMENT BY EMPLOYEE**

If an employer has overpaid an employee, the employer may deduct from the wages of the employee the amount of the overpayment. A deduction by an employer for reimbursement of an overpayment of wages previously made to an employee is not a fine under IC 22-2-8-1 or an assignment of wages under section 2 of this chapter. An employer must give an employee two (2) weeks notice before the employer may deduct, under this section, any overpayment of wages from the employee's wages.

- (b) An employer may not deduct from an employee's wages an amount in dispute under IC 22-2-9-3.
- (c) The amount of a wage deduction made by an employer under subsection (a) is limited to the following:
1. Except as provided in subdivision (2), the maximum part of the aggregate disposable earnings of an employee for any work week that is subjected to an employer deduction for overpayment may not exceed the lesser of:
    - A. twenty-five percent (25%) of the employee's disposable earnings for that week; or
    - B. the amount by which the employee's disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage prescribed by 29 U.S.C. 206(a)(1) in effect at the time the earnings are payable.

In the case of earnings for a pay period other than a week, the earnings must be computed upon a multiple of the federal minimum hourly wage equivalent to thirty (30) times the federal minimum hourly wage as prescribed in this section.

2. If a single gross wage overpayment is equal to ten (10) times the employee's gross wages earned due to an inadvertent misplacement of a decimal point, the entire overpayment may be deducted immediately. [IC 22-2-6-4]