

CITIES AND TOWNS BULLETIN

AND UNIFORM COMPLIANCE GUIDELINES
ISSUED BY STATE BOARD OF ACCOUNTS

September 2020

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UPCOMING TRAINING

With the current social conditions affecting us all, including the inability to have in person training, the State Board of Accounts will be conducting a series of virtual trainings through the end of the year. Below is our schedule:

September 30, 2020	WebEx Webinar – 9:00 -11:00 EST (2 nd hour for questions)
October 28 & 29, 2020	State called Fall District meeting – 9:00-12:00 EST each day
November 16, 2020	WebEx Webinar – 9:00 -11:00 EST (2 nd hour for questions)
December 18, 2020	WebEx Webinar – 9:00 -11:00 EST (2 nd hour for questions)

SBOA will be sending registration information for the WebEx Webinars (9/30, 11/16, & 12/18) in the near future. Registration for the Fall District meeting on October 28th and 29th will come from AIM – if you have any questions regarding registration for the October training, please contact AIM at 317-237-6200.

UNEMPLOYMENT CLAIMS

Each unemployment claim received should be carefully reviewed to make sure that the claim is proper. Protests should be filed when considered necessary.

According to the Indiana Department of Workforce Development Unemployment Insurance Employer Handbook (Revised 1/10/2020), page 47 and 48:

“Whenever an individual files an initial claim for benefits, their last employer and all of their base period employers are notified and asked to verify the reason for the claimant’s unemployment. This notifies the organization that its experience account may be charged. Employers that have elected to participate in the State Information Data Exchange System (SIDES) or SIDES E-Response can respond to these notices electronically. SIDES allows employers to exchange UI separation information with DWD electronically...If the organization is not signed up for electronic notice and response (SIDES), it may then use state form 640P to protest a claimant’s eligibility for benefits. The information the organization provides on this form could affect the claimant’s eligibility or any charges to the employer’s experience account for benefits paid. Form 640P is available online at www.in.gov/dwd/2465.htm...

Employers have a duty to prevent unemployment benefits from being paid if the claimant is not entitled to receive benefits. To prevent benefits from being paid in error, the organization must respond electronically, or submit Form 640P, if a former employee seeking unemployment benefits is unemployed because that person:

- Quit voluntarily or was absent for unknown reasons
- Was discharged for just cause (see Section VII)
- Was discharged for gross misconduct (see Section VII)
- Is not entitled to ANY pay or benefits from the organization;
- Is ineligible for any reason listed in this handbook.”

For purposes of the Unemployment Compensation System, IC 22-4-8-2(i)(1) and (2) defines employment to include service performed -

“(1)...by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one (1) or more other states or their instrumentalities) for a hospital or eligible postsecondary educational institution located in Indiana.

(2)... by an individual in the employ of this state or a political subdivision of the state or any instrumentality of the state or a political subdivision, or any instrumentality which is wholly owned by the state and one (1) or more other states or political subdivisions...

However, service performed...as the following is excluded:

- (A) An elected official.
- (B) A member of a legislative body or of the judiciary of a state or political subdivision.
- (C) A member of the state national guard or air national guard.
- (D) An employee serving on a temporary basis in the case of fire, snow, storm, earthquake, flood, or similar emergency.
- (E) An individual in a position which, under the laws of the state, is designated as: (i) a major nontenured policymaking or advisory position; or (ii) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week.”

CITY AND TOWN COURTS - STATE USER FEES

IC 33-37-5-10 provides that in each action in which a person is found to have:

- (1) committed an offense under IC 9-30-5;
- (2) violated a statute defining an infraction under IC 9-30-5; or
- (3) been adjudicated a delinquent for an act that would be an offense under IC 9-30-5, if committed by an adult;

and the person's driving privileges are suspended by the Court or the Bureau of Motor Vehicles as a result of the finding, the clerk shall collect an alcohol and drug countermeasures fee of two hundred dollars (\$200.00).

IC 33-37-5-9(b) states: "The court shall assess a drug abuse, prosecution, interdiction, and correction fee of at least two hundred dollars (\$200) and not more than one thousand dollars (\$1,000) against a person convicted of an offense under IC 35-48-4."

IC 33-37-5-9(c) provides that in determining the amount of the drug abuse, prosecution, interdiction, and correction fee assessed against a person, a court shall consider the person's ability to pay the fee.

IC 33-37-5-9(d) states: "The clerk shall collect the drug abuse, prosecution, interdiction, and correction fee set by the court when a person is convicted of an offense under IC 35-48-4."

IC 33-37-7-8(e) requires the Clerk of a City or Town Court to distribute monthly to the County Auditor: (1) seventy-five percent (75%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-37-4-1(b)(5), and (2) seventy-five percent (75%) of the aforementioned alcohol and drug countermeasures fees.

The remaining twenty-five percent (25%) will be distributed semiannually by the Clerk of a City or Town Court to the Auditor of State along with the State's share of court costs and any highway work zone fees, safe schools fees, regular and deferral/diversion automated record keeping fees, and family violence fees collected by the Court.

FUNDS – CREATING NEW FUNDS

The State Board of Accounts is frequently asked if officials of a city or town can establish a new fund for a particular purpose or function. Quite often the municipality wishes to create a nonreverting fund by diverting revenues (usually from the general fund) to accumulate an amount for a specific long term project or a large purchase. Sometimes, the municipality proposes to appropriate money from the general fund to transfer to the newly created fund. The following is our audit position to these questions.

IC 36-1-3-6 states, for a city or town, if there is a constitutional or statutory provision requiring a specific manner for exercising a power, a unit wanting to exercise the power must do so in that manner. If there is no constitutional or statutory provision requiring a specific manner exercising a power, a city or town wanting to exercise the power must either adopt an ordinance prescribing a specific manner for exercising the power; or comply with a statutory provision permitting a specific manner for exercising the power. An ordinance must be adopted by the legislative body of the municipality.

Our audit position is the powers granted by various statutes authorize the Common Council of a city or the town council of a town to create, by ordinance, as many funds as they feel necessary to operate their particular city or town.

FUNDS – CREATING NEW FUNDS (continued)

The enabling ordinance should provide various types of information.

- (1) The ordinance should clearly indicate the type or types of revenue that is to go into the new fund.
- (2) The ordinance should list the purpose or purposes for which expenditures can be made from the new fund.
- (3) The ordinance should establish the life of the new fund and indicate if the fund balance is nonreverting at year end or perpetual until terminated either by the terms of the current ordinance or if another subsequent ordinance must be enacted.
- (4) The ordinance should provide guidance as to disposition of the fund balance on termination of the fund.
- (5) The ordinance should include any other terms or conditions the city or town attorney deems necessary.

It should be noted that establishing a new fund by diverting revenues that would normally go into the city or town general fund or by transferring by appropriation from the general fund to the new fund creates a possible future problem. After creating and funding the new fund, if the city or town appeals to the Department of Local Government Finance (DLGF) for an excessive levy, the DLGF may insist that any balance or balances of such funds must be transferred to the city or town general fund and considered prior to any anticipated relief from the DLGF.

POLICE OFFICERS – AGE LIMITATIONS – EXAMINATIONS REQUIRED

IC 36-8-4-7 states in part a person may not be appointed as a member of the police department after the person has reached thirty-six (36) years of age. A person may be reappointed as a member of the department only if the person is a former member or a retired member not yet receiving retirement benefits of the 1925, 1953, or 1977 fund and can complete twenty (20) years of service before reaching sixty (60) years of age. A person must pass the aptitude, physical ability and physical examination that is required by the local board of the fund and by IC 36-8-8-19 to be appointed or reappointed as a member of the department.

CLERK'S RECORD PERPETUATION FUND

As provided in IC 33-37-5-2, each Clerk of a City or Town Court shall establish a Clerk's Record Perpetuation Fund. The Clerk shall deposit in the fund all: (1) revenue received by the clerk for transmitting documents by facsimile machine to a person under IC 5-14-3; (2) document storage fees required under IC 33-37-5-20; (3) late payment fees imposed under IC 33-37-5-22; and fees for preparing a transcript or copy of any record under IC 33-37-5-1.

Such fees are to be remitted by the Court to the City or Town fiscal officer at the end of each month.

The Clerk of a City or Town Court may use the money in the fund for the preservation of records, the improvement of record keeping systems and equipment, and a case management system. The fund would require appropriation.

MUNICIPAL UTILITIES – UNDERGROUND FACILITIES

IC 8-1-26 regulates underground facilities including electric, gas, water and sewer lines. Owners and operators of these facilities must become a member of the Indiana Underground Plant Protection Services (IUPPS) and provide the following to IUPPS:

- (1) The name of each township and county in which the operator has underground facilities, including those facilities that have been abandoned in place by the operator but not yet physically removed.
- (2) The name of the operator.
- (3) The name, title, address, and telephone number of the operator's representative designated to receive the notice of intent required by IC 8-1-26-16.

An operator shall report any changes in the information contained in the list provided to the association within thirty (30) calendar days of the change. The document reflecting the changes shall be cross-referenced to the original information reported.

A person that is required, but fails, to maintain membership in the association after December 31, 2009, may be subject to a civil penalty in an amount recommended by the advisory committee and approved by the commission, not to exceed one hundred dollars (\$100). Each day that a person that is required, but fails, to maintain membership in the association constitutes a separate violation for purposes of imposing a fine.

Persons responsible for excavation or demolition projects must: (1) serve notice on IUPPS of the person's intent to excavate or demolish; and (2) perform white lining at the excavation or demolition site if the person is unable to notify IUPPS of the physical location of the excavation or demolition by street address, legal description, or highway location using mile markers or cross streets.

Persons causing damage to underground facilities who failed to notify IUPPS may be subject to a civil penalty of up to ten thousand dollars (\$10,000).

ACCIDENT REPORT FEES

Accident report fees collected pursuant to IC 9-26-9-3 which are fixed by ordinance in an amount not less than five dollars (\$5) are not subject to the actual cost requirements of IC 5-14-3-8. However, any other copies of documents maintained by a law enforcement agency would be subject to IC 5-14-3-8.

DOCUMENT FEES - CITY OR TOWN COURT

As provided in IC 33-37-5-1, a city or town court shall collect a fee of one dollar (\$1) per legal size or letter size page, including a page only partially covered with writing, for preparing a transcript or copy of any record. However, this would not apply to the transmitting of a document by facsimile machine or other electronic device.

SEWER LIENS - WHEN UNENFORCEABLE

IC 36-9-23-32 addresses unpaid sewer fees and how liens are enforced.

A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the County Recorder before the conveyance to the subsequent owner. If the property is conveyed before the lien can be filed, the municipality shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not less than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss. [IC 36-9-23-32(b)]

The municipality shall release:

- (1) liens filed with the County Recorder after the recorded date of conveyance of the property; and
- (2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner, and that the purchaser has not been paid by the seller for the delinquent fees. [IC 36-9-23-32(d)]

With regard to unpaid fees for properties not occupied by the owner, IC 36-9-23-32(c) provides a lien attaches against real property occupied by someone other than the owner only if the utility notified the owner within twenty (20) days after the time the utility fees became sixty (60) days delinquent. A notice sent to the owner must be sent by certified mail, return receipt requested, or an equivalent service permitted under IC 1-1-7-1 to:

- (1) the owner of record of real property with a single owner; or
- (2) at least one (1) of the owners of real property with multiple owners;

at the last address of the owner for the property as indicated in the records of the county auditor on the date of the notice. The cost of sending notice under this subsection is an administrative cost that may be billed to the owner.

An exception to IC 36-9-23-32(c) could be if the legislative body adopted an ordinance that provided sewage fees assessed against property not occupied by the owner do not constitute a lien against the property. [IC 36-9-23-25(f)(3)]

CONTROLLED SUBSTANCE EXCISE TAX

IC 6-7-3 imposes a controlled substance excise tax on persons receiving delivery of, taking possession of, or manufacturing a controlled substance. The amount of the tax varies by weight and type of controlled substance which is seized as listed in IC 6-7-3-6.

IC 6-7-3-16(b) states in part: "Whenever a law enforcement agency provides information leading to the collection of a tax liability imposed under this chapter, the department (Indiana Department of Revenue) shall award thirty percent (30%) of the total amount collected from an assessment to the law enforcement agency that provided the information that resulted in the assessment. The law enforcement agency shall use the money the agency receives . . . to conduct criminal investigations."

CONTROLLED SUBSTANCE EXICES TAX (continued)

Such money is to be receipted to the city or town general fund and set aside for criminal investigations. An appropriation would be required before such expenditures could be made. A city or town council could also establish a separate criminal investigations fund by ordinance and deposit such revenues into that fund.

UNCLAIMED PROPERTY - UNPAID CHECKS

For warrants or checks drawn by the Auditor of State or from public funds of a political subdivision, if the check or warrant is outstanding and unpaid, an agreement to locate and recover the warrant or check is valid only if:

- (1) the fee or compensation agreed upon is not more than ten percent (10%) of the amount collected unless the amount collected is fifty dollars (\$50) or less;
- (2) the agreement is in writing;
- (3) the agreement is signed by the apparent owner; and
- (4) the agreement clearly sets forth:
 - (A) the nature and value of the property; and
 - (B) the value of the apparent owner's share after the fee or compensation has been deducted. (IC 5-11-10.5-7 and IC 32-34-1)

DISHONORED CHECKS

IC 36-1-8-13 provides a city or town that is unable to obtain payment of a dishonored check shall, not later than ninety (90) days after the check is initially received by the city or town, refer the matter to the Prosecuting Attorney for the county where the dishonored check was received for prosecution.

CONVEYANCES, MORTGAGES OR INSTRUMENTS OF WRITING

IC 32-21-2-3 provides to entitle any conveyance, mortgage or instrument of writing to be recorded, it shall be acknowledged by the grantor or proved before any:

- (1) Judge;
- (2) Clerk of a Court of Record;
- (3) County Auditor;
- (4) Count Recorder;
- (5) Notary Public;
- (6) Mayor of a city in this or any other state;
- (7) Commissioner appointed in any other state by the Governor of Indiana;
- (8) Minister, Charge D'affaires, or Consul of the United States in any foreign country;
- (9) Clerk of the City-County Council for a consolidated city, City Clerk for a second class city, or Clerk-Treasurer for a third class city;
- (10) Clerk-Treasurer for a town; or
 - (11) Person authorized under IC 2-3-4-1, including a member of the General Assembly, the Principal Clerk of the House of Representatives, and the Secretary of the Senate.

PUBLIC NOTICE ADVERTISING - POSTING NOTICES

If there is only one (1) newspaper published in a city or town, then publication of notices in that newspaper alone is sufficient. If no newspaper is published in the city or town, then publication shall be made in a newspaper published in the county in which the city or town is located and that circulates within the city or town. [IC 5-3-1-4(c)]

If any officer charged with the duty of publishing any notice required by law is unable to procure advertisement:

- (1) at the price fixed by law;
- (2) because the newspaper refuses to publish the advertisement; or
- (3) because the newspaper refuses to post the advertisement on the newspaper's Internet web site (if required under section IC 5-3-1-1.5);

it is sufficient for the officer to post printed notices in three (3) prominent places in the political subdivision, instead of publication of the notice in the newspapers and on an Internet web site (if required under IC 5-3-1-1.5).

DONATIONS TO FOUNDATIONS

IC 36-1-14-1(b) states: “Notwithstanding IC 8-1.5-2-6(d), a unit (defined in IC 36-1-2-23 to mean a city or town) may donate the proceeds from the sale of a utility or facility or from a grant, a gift, a donation, an endowment, a bequest, a trust, or gaming revenue to a foundation under the following conditions:

- (1) The foundation is a charitable nonprofit community foundation.
- (2) The foundation retains all rights to the donation, including investment powers.
- (3) The foundation agrees to do the following:
 - (A) hold the donation as a permanent endowment.
 - (B) distribute the income from the donation only to the unit as directed by resolution of the fiscal body of the unit.
 - (C) return the donation to the general fund of the unit if the foundation:
 - (i) loses the foundation's status as a public charitable organization;
 - (ii) is liquidated; or
 - (iii) violates any condition of the endowment set by the fiscal body of the unit.”

A unit may use income received from a community foundation only for purposes of the unit. (IC 36-1-14)

Gaming revenue means revenue received under IC 4-33-12-6, IC 4-33-13, IC 4-35-8.5, or an agreement to share a city's or county's part of the revenue.

CITY AND TOWN COURT COST FUND

Cities and towns may qualify for a distribution of the court costs collected by the various county courts. To qualify, your city or town must have maintained a law enforcement agency that prosecutes at least fifty percent (50%) of its ordinance violations in a circuit, superior, or county court located in the county.

IC 33-37-7-6(a) provides that three percent (3%) of the amount of fees collected under IC 33-37-4-1(a) (criminal costs fees); IC 33-37-4-2(a) (infraction or ordinance violation costs fees); IC 33-37-4-3(a) (juvenile costs fees); IC 33-37-4-4(a) (civil costs fees); IC 33-37-4-7(a) (probate costs fees); and IC 33-37-5-17 (deferred prosecution fees) shall be distributed to each city and town maintaining a law enforcement agency that prosecutes at least fifty percent (50%) of its ordinance violations in a circuit or superior court

CITY AND TOWN COURT COST FUND (continued)

located in the county.

IC 33-37-7-6(b) states “The county auditor shall determine the amount to be distributed to each city and town qualified under subsection (a) as follows:

STEP ONE: Determine the population of the qualified city or town.

STEP TWO: Add the populations of all qualified cities and towns determined in STEP ONE.

STEP THREE: Divide the population of each qualified city and town by the sum determined under STEP TWO.

STEP FOUR: Multiply the result determined under STEP THREE for each qualified city and town by the amount of the qualified municipality share.”

IC 33-37-7-6(c) provides the County Auditor shall semiannually distribute to each city and town described in IC 33-37-7-6(a) the amount computed for that city or town under STEP FOUR of IC 33-37-7-6(b).

When the County Auditor receives the court costs due to the county from the Clerk of the Circuit Court, the Auditor will place three percent (3%) of the total court costs collected into a separate city and town court cost fund. Semiannually (usually in June and December), the County Auditor shall distribute the amount accumulated to each city and town that “prosecutes at least fifty percent (50%) of its ordinance violations in a circuit, superior, or county court located in the county. The distribution shall be made to all qualified cities and towns based upon their individual proportionate share of population related to the total population of all of the qualified cities and towns. The city or town fiscal officer shall receipt the distribution to the General Fund and an appropriation is required to spend it.

Each city and town that qualifies is encouraged to contact the County Auditor each May and November (the months prior to distribution) to ensure receipt of any amounts owed to your city or town.

Several questions concerning the distribution of the City and Town Court Cost Fund by the County Auditor have been asked by city, town and county officials. The questions, along with our audit positions, are as follows:

Question #1 What must a municipality do to qualify for a share of the City and Town Court Cost Fund?

Answer #1 *A municipality must maintain a law enforcement agency and prosecute at least fifty percent (50%) of its ordinance violations in a Circuit or Superior Court located in the county. The County Auditor shall determine the amount to be distributed to each qualified city and town. (IC 33-37-7-6)*

Question #2 If a city files a local ordinance violation, does that qualify the city to receive such funds even if the case is dismissed by the city?

Answer #2 *No. The city (or town) must prosecute the case in order to qualify.*

Question #3 In which semiannual period does the city or town receive a share of such funds assuming only one (1) case is filed? Is it the period in which the case was filed or is it the period in which it was prosecuted?

CITY AND TOWN COURT COST FUND (continued)

Answer #3 The period in which the case was prosecuted would govern the period of distribution. Distributions are to be made semiannually (June and December) for the previous six (6) months collections.

Question #4 Can a city or a town with an Ordinance Violations Bureau qualify for the distribution?

Answer #4 Yes, IC 33-36-3-6(b) states that ordinances processed through an Ordinance Violations Bureau are not to be considered in determining whether the unit prosecuted at least fifty percent (50%) of its ordinance violations in a Circuit or Superior Court.

Question #5 To what fund does a city/town receipt the distributions?

Answer #5 Distributions should be receipted to the General Fund. Disbursements require appropriations

FIELD EXAMINER IDENTIFICATION

Whenever you are contacted by a person requesting records who holds themselves out to be a Field Examiner of the State Board of Accounts, and you are not certain of their identity, you should request further identification. All Field Examiners of the State Board of Accounts have been issued a picture identification for this purpose. If you are uncertain whether an individual is a Field Examiner of the State Board of Accounts, you can request to see their identification (which could be scanned and emailed to you in a remote audit situation) and/or contact the central office for confirmation at (317) 232-2513 or cities.towns@sboa.in.gov.

COMPENSATION OF OFFICERS AND EMPLOYEES**CITY OFFICERS AND EMPLOYEES*****ELECTED CITY OFFICIALS***

IC 36-4-7-2 states:

“(a) As used in this section, "compensation" means the total of all money paid to an elected city officer for performing duties as a city officer, regardless of the source of funds from which the money is paid. The term includes all employee benefits paid to an elected city officer, including life insurance, health insurance, disability insurance, retirement benefits, and pension benefits. For purposes of determining an increase or decrease in compensation of an elected city officer, the term does not include any of the following:

- (1) Payment of an insurance premium.
- (2) Payments in recognition of:
 - (A) longevity;
 - (B) professional certifications; or
 - (C) educational advancements;
 that are separately identified on a salary ordinance or resolution.
- (3) Payment of a stipend or per diem allowed by statute.
- (4) A payment authorized under section 4 of this chapter.”

COMPENSATION OF OFFICERS AND EMPLOYEES (continued)

“(b) The city legislative body shall, by ordinance, fix the annual compensation of all elected city officers. An ordinance adopted under this subsection that fixes the annual compensation of an elected city officer shall provide for an annual, monthly, or biweekly salary schedule. An elected city officer is not required to report hours worked and may not be compensated based on the number of hours worked.

“(c) The compensation of an elected city officer may not be changed in the year for which it is fixed, nor may it be reduced below the amount fixed for the previous year.”

APPOINTIVE OFFICERS, DEPUTIES AND OTHER EMPLOYEES (Except Police Officers and Firefighters)

IC 36-4-7-3 states:

“(a) This section does not apply to compensation paid by the city to members of its police and fire departments.

(b) Subject to the approval of the city legislative body, the city executive shall fix the compensation of each appointive officer, deputy, and other employee of the city. The legislative body may reduce but may not increase any compensation fixed by the executive. Compensation must be fixed under this section not later than November 1 of each year for the ensuing budget year.

(c) Compensation fixed under this section may be increased or decreased by the executive during the budget year for which it is fixed.

(d) Notwithstanding subsection (b), the city clerk may, with the approval of legislative body, fix the salaries of deputies and employees appointed under IC 36-4-11-4”

ADDITIONAL COMPENSATION FROM UTILITIES OR FUNCTIONS

IC 36-4-7-4 states:

“(a) Subject to the approval of the city legislative body, the city executive may provide that the city officers including (elected city officers) and employees receive additional compensation for services that : (1) are performed for the city, (2) are not governmental in nature; and (3) are connected with the operation of a municipally owned utility or function.

(b) Subject to the approval of the executive and legislative body, the administrative agency operating the utility or function shall fix the amount of the additional compensation, which shall be paid from the revenues of the utility or function.”

In accordance with the provisions of IC 18-2-1-12 [Repealed, See IC 36-4-7-4], the award of compensation shall plainly specify both the amount and the recipient, shall establish that the services performed are other than governmental, shall be awarded by the administrative authority in charge of the utility, and shall be approved by the common council and the mayor.

It is our audit position that if the official records of the utility or function do not show the award of this additional compensation and the official records of the civil city do not show approval of the mayor and common council by ordinance or resolution as the statutes regulating the utility might provide, then there is no authority to make any payment.

COMPENSATION OF OFFICERS AND EMPLOYEES (continued)***POLICE OFFICERS AND FIREFIGHTERS***

IC 36-8-3-3(d) states: “The annual compensation of all members of the police and fire department and other appointees shall be fixed by ordinance of the legislative body not later than November 1 of each year for the ensuing budget year. The ordinance may grade the members of the departments and regulate their pay bank rank as well as by length of service. If the legislative body fails to adopt an ordinance fixing the compensation of members of the police or fire department, the safety board may fix their compensation, subject to change by ordinance.”

SALARY SCHEDULES

IC 36-4-7-5 states: “Salaries of city officers and employees shall be scheduled as provided in the budget classifications prescribed by the State Board of Accounts.”

TOWN OFFICERS AND EMPLOYEES

IC 36-5-3-2 states:

“(a) As used in this section, "compensation" means the total of all money paid to an elected town officer for performing duties as a town officer, regardless of the source of funds from which the money is paid. The term includes all employee benefits paid to an elected town officer, including life insurance, health insurance, disability insurance, retirement benefits, and pension benefits. For purposes of determining an increase or decrease in compensation of an elected town officer, the term does not include any of the following:

- (1) Payment of an insurance premium.
- (2) Payments in recognition of:
 - (A) longevity;
 - (B) professional certifications; or
 - (C) educational advancements;
 that are separately identified on a salary ordinance or resolution.
- (3) Payment of a stipend or per diem allowed by statute.
- (4) A payment authorized under subsection (d).

(b) The town legislative body shall, by ordinance, fix the compensation of its own members, the town clerk-treasurer, and the town marshal. An ordinance adopted under this subsection that fixes the annual compensation of an elected town officer shall provide for an annual, monthly, or biweekly salary schedule. An elected town officer is not required to report hours worked and may not be compensated based on the number of hours worked. The legislative body shall provide reasonable compensation for other town officers and employees.

(c) The compensation of an elected town official may not be changed in the year for which it is fixed, nor may it be reduced below the amount fixed for the previous year.

(d) The legislative body may provide that town officers and employees received additional compensation for services that: (1) are performed for the town; (2) are not governmental in nature; and (3) are connected with the operation of a municipally owned utility or function. Subject to the approval of the legislative body, the administrative agency operating the utility or function shall fix the amount of the additional compensation, which shall be paid from the revenues of the utility or function.”

COMPENSATION OF OFFICERS AND EMPLOYEES (continued)

Compensation of all town officers and employees shall be fixed by an ordinance of the town council and, for other than elected town officials, this compensation may be changed by council through an amendment to the salary ordinance at any time. There is no limitation upon the amount fixed, only to the extent of available appropriations where tax funds are involved. At the time such compensation is fixed, it may be prorated between the general fund or any other applicable funds of the town, as well as any available funds.

The approval of the claim for increased compensation does not authorize the town clerk-treasurer to pay such increase unless it is specifically provided for by ordinance of the town council.

We recommend a salary ordinance of officials and employees for the next succeeding year be enacted by the town council annually on or before August 1 of each year and made a part of the minutes of the town council. This action is recommended in order for town officials to have such information available prior to making out the annual budget for next year's costs of operations.

OFFICIAL BONDS – AMOUNTS

IC 5-4-1-18 provides the minimum amount of the official bonds for city controllers, city and town clerk-treasurers, and Barrett Law Fund custodians is \$30,000 and may not be more than \$300,000 unless the fiscal body approves a greater amount of coverage. The coverage must equal \$30,000 for each million dollars of receipts of the officer's office during the last complete fiscal year before the purchase of the bond.

OFFICIAL BONDS – FILING

Every elected or appointed officer, official, deputy, or employee of political subdivision who is required by IC 5-4-1-18 to file an official bond for the faithful performance of duty shall file the bond in the office of the county recorder in the county of office or employment of the officer, official, deputy, employee, or contractor.

IC 5-4-1-5.1 requires the bonds be filed within ten (10) days of their issuance or, if approval is required, within ten (10) days after their approval by the person required to approve the bonds. The recorder shall record all of the bonds filed, indexing them alphabetically under the name of the principal and referring to the title, office, and page number where recorded. The bonds shall be kept in a safe and convenient place in the recorder's office with a reference to the date files and record and page where recorded.

IC 36-2-7-10(h) states that the county recorder may not collect a fee for recording an official bond of a public officer, a deputy, an appointee, or an employee.

NEW OFFICIAL WEBINAR Q&A

On August 26th and 27th, 2020, the State Board of Accounts conducted six hours of training geared toward those Clerk-Treasurers who took office or were appointed after January 1, 2020. Below are some of the questions and answers from the training:

Question: *Are we doing utility disconnects and late penalties again?*

Answer: The Governor's Executive Order putting a moratorium on disconnections during the public health emergency expired August 14, 2020. However, utilities under the IURC must work with their customers and provide payment plans of at least 6 months and make them available through October 12, 2020 (IURC Cause Number 45377). Additionally, IURC utilities waive late fees, disconnection/reconnection fees, and deposits for residential customers through October 12, 2020. <https://iurc.portal.in.gov/entity/sharepointdocumentlocation/f9ff27c0-a8dc-ea11-a813-001dd8018831/bb9c6bba-fd52-45ad-8e64-a444aef13c39?file=45380%20ORDER%20081220.pdf>

It was recommended by Executive Order 20-33 that utilities not under IURC governance offer payment plans of at least six months to all customers in order to avoid later discontinuation of utility service.

Question: *What is a salary ordinance was not passed for 2020? I am a town. Can this still be completed? Or an amendment? Or what?*

Answer: Our audit position is if a city or town council does not adopt a salary ordinance for a calendar year, the most recent ordinance remains in effect.

Question: *Does reporting loss or theft apply to an employee of the town or just public officials and is it subject to the materiality threshold?*

Answer: Reporting the loss or theft applies to public officials, which includes city or town employees, appointed officials, and elected officials.

Misappropriation by public officials has no materiality level. See State Examiner Directive 2015-6 for more information or call us if you have a specific question on whether something needs to be reported.

Question: *Can I still reconcile for 2020 even though there were no reconcilements done prior to me taking office in January?*

Answer: Yes, you would perform your reconciliations for each month of 2020 in the same manner as described in the training webinar.

Question: *What if our unit created a COVID fund & appropriations prior to these memorandums/bulletins regarding fund & appropriation numbers and have already used the fund & appropriations with the numbers NOT recommended by SBOA? Will we have to go back and void/change the transactions to match SBOA's numbers?*

Answer: If you created funds and numbers not in the series 150-175 as prescribed, we would not recommend making changes at this point. In order to avoid any audit comments, our Field Examiners will need to be able to identify and examine each separate fund, so the fund name should clearly identify the fund as COVID related and to which CARES Act monies the fund is accounting for.

Please be aware there are several different CARES Act monies - some cities and towns will get multiple grants. A separate fund is required for each CARES grant.

NEW OFFICIAL WEBINAR Q& A (continued)

Question: *Is it possible to get a detailed list of all expenses that can come out of each fund? I am a new Clerk Treasurer and would like to make sure that all expenses and future expenses are coming out of the correct funds. Are the PowerPoint presentations on your website?*

Answer: Part of the training included some common funds, what their statutory authority is, where the money comes from, and what the money can be used for. You can find the PowerPoint presentation on our website [www.in.gov/sboa] on either the cities page or towns page under the heading “Presentations and Training Materials”.

Question: *Have you had much experience where a federal agency overruled Indiana statutes as related to paying unemployment to a former elected official or payment they demanded for work completed between the last pay period and 12/31/19 which caused a situation that exceeded the salary ordinance?*

Answer: See discussion earlier in this Bulletin titled “Unemployment Claims”.

Question: *I recently was told that I may have to do monthly reports for revenue and account payables. Is that true?*

Answer: There are some changes coming to the monthly upload of documents to Gateway that we will be training on later this year.

Question: *Would an SRF loan for our wastewater treatment plant be included in an audit?*

Answer: Yes. The financial activity for a SRF loan is to be recorded on the accounting ledger in a fund (separate fund for each individual SFR in case you have multiple) and would be included in an audit.

Question: *We have an events committee that has filed for their 501c3; however, we still have their fund. Do their meeting minutes need to be uploaded into Gateway?*

Answer: No. As an outside 501c3 entity, you would not need to upload their minutes. In addition, you probably should not account or possess their money as they are not part of your city/town. That money, if you keep it, would not be part of the AFR.

Question: *What type of documentation will be needed concerning grants?*

Answer: To get started, you should have copies of grant agreements, award letters/notices (of how much you are getting), and claims for payment using the grant money. During an audit, the Field Examiner may need additional specific information, but the aforementioned will be what you need to get started.

Question: *I have received notice that our town is going to be audited for 2019. The previous clerk treasurer did not upload any of the 2019 meeting minutes into gateway. Is this something that I need to do?*

Answer: Yes. You should upload those minutes to Gateway so that our field examiners will have them.

Question: *If I am closing a bank account for my wastewater utility and moving the balance into the main bank account for the wastewater utility....do I need an ordinance to do so? Or is it enough if recorded in meeting minutes?*

Answer: Minutes of a council meeting would be, for our audit purposes, sufficient.

NEW OFFICIAL WEBINAR Q& A (continued)

Question: *Who normally creates the Capital Assets list? The town manager? Council President? Clerk Treasurer? I replaced the former clerk treasurer as of January 1st of this year. I know she was audited last year. Do I need to look at her report to see if I need to make any corrections for when I get audited? And where do I find it?*

Answer: To create the list, someone will need to take an inventory of assets currently in possession of the city/town. The person or persons who are involved would be up to the local officials. Once completed, the historical cost of the items considered capital assets would need to be determined and included on the Capital Asset Ledger (Form No. 369 or approved alternate form). Once that is completed, the Clerk-Treasurer would be responsible for the maintenance of the Capital Asset Ledger.

Prior audit reports can be located here: <https://secure.in.gov/apps/sboa/audit-reports/#/>

Question: *I have uploaded our board meetings monthly to gateway, not our Park & Rec. Do I need to upload Jan-July meetings or start with August?*

Answer: Please start with the upload of the January minutes.

Question: *If a town has a charge acct with a company, what would be the best internal control policy for this?*

Answer: Our website has best practices for several areas, including credit/charge cards. Please see: <https://www.in.gov/sboa/files/CREDIT%20CARD%20PURCHASES%20long%20version.pdf>

Question: *If our Town is being audited on the prior Clerk Treasurer, would the Prior be in the Exit Conference along with her Town Board President at the time?*

Answer: In this scenario, an Exit Conference would be held with the former Clerk-Treasurer as well as with the current Clerk-Treasurer and any current members of Council that wished to attend.

Question: *Can the Newly Elected Board decrease the salaries of the prior Salary Ordinance if they feel that the salaries were set to high?*

Answer: A city/town council can amend the salary ordinance for non-elected officials and employees during the current year. If a new council amended the salary ordinance in effect for the current year and lowered the compensation for non-elected officials and employees, we would not take audit exception.

Question: *Would you need to download Aviation Board Minutes? In 2021 and interlocal agreement between City and County will be abolished and the City will take it over.*

Answer: Yes, we think you could upload the aviation minutes when the city takes it over.

Question: *Which employees need to watch the I.C. video? Do employees who will use the credit card at some point need to watch it?*

Answer: Officers and employees required to take the internal control training are those, per IC 5-11-1-27(c), whose official duties include receiving, processing, depositing, disbursing, or otherwise having access to public funds.

Question: *Our local banking branch is closing at the end of the year. We have a town close to us with a branch, and a branch in another city, do we have to take our deposits to the same branch?*

Answer: No, we aren't aware of any requirements to take your deposits to the same branch.

NEW OFFICIAL WEBINAR Q& A (continued)

Question: *If polices are in a Council approved handbook is that sufficient for policy procedure?*

Answer: Yes. If council approves the handbook in a public meeting, that would be sufficient. Just make sure any time changes are made to the handbook, they need to re-approve and adopt it.

Question: *If I combine bank account do I have to have council approval? We have 32 bank accounts I am trying to combine some.*

Answer: It's our audit position you would not need council approval to combine bank accounts, but it may be a gesture of goodwill to inform them of the combination. Please keep in mind some separate accounts may be required (for example, a grantor agency may require their grant money be maintained in a separate bank account).

Question: *Historically our city policies regarding capitalization, travel, etc. have been approved by Board of Works, not Council. Do you see potential issues with this?*

Answer: From an audit perspective, no - if council has delegated such policies go through a Board of Public Works.

Question: *Are policies, procedures and ordinances all the same? Are these written by the board, or by whom?*

Answer: Not necessarily. A policy can be adopted that isn't part of an ordinance, but a policy is something requiring council or governing board action in a public meeting.

Question: *What constitutes a capital asset?*

Answer: It would be anything, like a piece of equipment, land, water lines, infrastructure, etc. that was acquired over the capitalization threshold established by council. If council sets a threshold of \$5,000 (for example) and you purchase a piece of equipment of \$4,000, it would not be a capital asset.

Question: *Our salary ordinance contained names rather than position and is from 2014. Can the new board re-write this with position and adopt?*

Answer: You would want to consult your attorney for a legal opinion. From an audit perspective, we'd consider the old ordinance as still being in effect. If employees and officials are not being paid in accordance with that ordinance, we would not (for non-elected positions) take audit exception to council adopting a salary ordinance for 2020 retroactive to January 1st that included positions rather than names. For elected officials, we'd recommend those positions not be listed by name but rather by position/title. Please be mindful the compensation of an elected official can't be changed during the year in which it's fixed, so the compensation currently being paid is what would have to remain until year end. In this scenario and given the time of the year, perhaps the best approach would be to continue the rest of 2020 as you have been and have council adopt a salary ordinance for 2021 that has positions instead of names.



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MEMORANDUM

TO: Counties, Cities, Towns, Townships, Libraries, and Special Districts
FROM: Debbie Gibson, CPA, CFE Director of Audit Services
RE: Financial Reporting and Reimbursement Procedures for CARES Funding
DATE: August 27, 2020

Dear Officials:

The Federal CARES Act Funds are considered other federal financial assistance. \$300,000,000 of these funds have been allocated to Indiana Counties, Cities and Towns (each a "Participant") through the Indiana Finance Authority (IFA) Coronavirus Relief Fund Program. Each Participant must account for CARES Act Funds in accordance with the State Board of Accounts Memorandum titled *COVID Grant Accounting and Appropriations*, dated April 29, 2020 and in accordance with this additional guidance.

For each reimbursement request, each Participant will be making certain certifications, representations, warranties and agreements for which the Participant will be fully and legally responsible, regardless of whether such request is made on behalf of the Participant or another political subdivision.

Each Participant is considered a sub-recipient of IFA for CARES Act Funds received through the Coronavirus Relief Fund Program and is subject to all requirements of the federal financial assistance program.

The Coronavirus Relief Fund Program transactions, including reimbursements passed through to another political subdivision, must be accounted for in a separate fund (please see April 29, 2020 memo) and reported on the Participant's Schedule of Expenditures of Federal Awards (SEFA). Any funds passed through to another political subdivision by the Participant will be shown as pass-through on the Participant's SEFA.

Because only Counties, Cities and Towns are eligible to be a Participant, each Participant may allocate funds for the use of other political subdivisions. Townships seeking reimbursement for eligible expenses should coordinate with their county government. Other political subdivisions should coordinate with their enabling body.

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Financial Reporting

When a Participant allocates CARES Act Funds to another political subdivision in accordance with IFA guidance, the Participant will be considered a Pass-through Agency for that political subdivision; the political subdivision will be considered a sub-recipient of the Participant.

Both the Participant and the other political subdivision are subject to all requirements of the program, but the Participant will be held fully and legally responsible for all transactions to the IFA.

Just as the Participant must account for the coronavirus relief fund program in a separate fund, so must the other political subdivision account for all coronavirus relief fund program transactions in a separate fund. (please see April 29, 2020 memo).

The other political subdivision must also report the activity on their Schedule of Expenditures of Federal Awards (SEFA). Guidance should be provided to the other political subdivision by the Participant that these are Federal funds and should be included on that unit's SEFA.

According to the Coronavirus Relief Fund Frequently Asked Questions located at <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf> the proper name and CFDA number to use on the SEFA is Coronavirus Relief Fund, CFDA Number 21.019.

Each Participant and other political subdivision should have internal controls in place to ensure that the reimbursements and related expenses are posted to the separate fund and accurately reported on the SEFA.

Agreement between Participant and Other Political Subdivisions

For proper supporting documentation and internal control the Participant and other political subdivisions should have in place a written agreement.

Such an agreement should set out the responsibilities of each party and include provisions in the event that a request for reimbursement is denied or later determined unallowable.

This is especially important for the Participant as the Participant is responsible to IFA for any monies that are determined unallowable, including those disbursed to the other political subdivision.

The agreement should clearly state that the political subdivision is a sub-recipient, that the reimbursements are federal assistance and subject to the Single Audit Act, and that the reimbursements must be included in the SEFA. The agreement should provide the federal program name and CFDA number.

It should include any other provisions as required by IFA and Federal provisions as noted in 2 CFR 200.331.

Requirements under CARES Act also specifically mention internal control requirements found under 2 CFR 200.303 which you should already be familiar with through SBOA's Internal Control Manual and training.

Other items to consider for the agreement: Maintenance of documentation (including access to records by both the pass-through entity and auditors), expected communication and what form the communication will be in, will warrants be electronic or paper, etc.

The agreement should be approved by both entities' governing bodies.

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Reimbursements

Internal Controls should be developed by the Participant to ensure that all reimbursement requests are reviewed for compliance with the terms of program, are made on a timely basis, and contain all of the proper forms, documentation, and certifications required by IFA.

When the Participant processes the reimbursement requests for another political subdivision, the Participant must review all claims for reimbursement submitted by a political subdivision for compliance with the grant terms and for sufficient supporting documentation. The Participant is responsible for completing the request for reimbursement to the IFA along with the proper forms, documentation, and certifications. The Participant must maintain all documentation submitted on the behalf of a political subdivision in such a way that it is easily identifiable with that political subdivision. The Participant will be held fully and legally responsible for all certifications, representations, warranties, and agreements related to the requests for reimbursement.

Reimbursement received from IFA will be made directly to the Participant and must be deposited with the fiscal officer of the Participant in compliance with IC 5-13-6-1. This is the case regardless if the reimbursement is for the Participant or on behalf of another political subdivision.

Internal Controls should be established to ensure that the reimbursement received matches the request and supporting documentation submitted.

If IFA declines all or part of a reimbursement request, this documentation should also be maintained and would be part of the matching reconciliation.

Reimbursements received by the Participant on behalf of another political subdivision must be remitted to that political subdivision by warrant of the Participant.

The Participant must remember that the money that is reimbursed to the other political subdivision is actually a disbursement of the Participant's own funds and so the Participant should follow the appropriate disbursement process which would include verification that the disbursement has proper supporting documentation (receipts for reimbursement, agreement between the two entities, etc.). This would also require proper claims processing, including approval by the governing body. The claim document would be filled out by the Participant based on receipts received from the political subdivision and the reimbursement documentation received from IFA.

If the Participant has denied any of the political subdivision's reimbursement request or IFA has denied any of the political subdivision's reimbursement request, the Participant must communicate the denial to the political subdivision and maintain the documentation of the denial.

The accounting for these funds are contingent to some degree on federal requirements which have been evolving. However, if you remember the basics for accountability and transparency as you would any of your other funds, the utilization of processes that are already in place, including but not limited to: audit of claims, approval procedures, separately identifying and documenting financial activity when there are specific requirements, etc., you will always have the important basics covered.

If you have any questions please do not hesitate to contact the SBOA director that specializes in your unit.