

## CHAPTER 2

### THE TOWNSHIP TRUSTEE

#### INTRODUCTION

*The Accounting And Uniform Compliance Guidelines Manual For Townships* is designed to provide townships with some of the information needed to fulfill duties. The information contained herein is intended to assist you and does not represent legal advice, or a legal opinion, references to statutes or other authoritative materials may not be all inclusive.

#### ELECTION

Township trustees and the three members of the township board shall be elected at the general election preceding the expiration of their term of office, and every four (4) years thereafter. The term of office shall be four (4) years and such term shall begin on the first day of January succeeding the election. IC 3-10-2-13; IC 36-6-4-2; IC 36-6-6-2

#### DESIGNATION OF TRUSTEE

Within thirty (30) days after taking office, the trustee shall designate a person who shall perform the trustee's duties whenever the trustee is incapable of performing the trustee's duties because the trustee (1) is absent from the township; (2) becomes incapacitated. The trustee shall give notice of the designation to the chairman of the township board, the county sheriff, and any other persons that the trustee chooses. The designee shall have all the powers of the trustee. The trustee may change the designee at any time. The designee shall perform the trustee's duties until: (1) the trustee is no longer absent from the township; or (2) an acting trustee is appointed by the county commissioners under IC 36-6-4-16. IC 36-6-4-18

#### VACANCY BY REASON OF INCAPACITY

When twenty-five (25) or more resident freeholders of a township file a petition with the circuit court of the county, alleging that the township trustee is incapable of performing his duties due to mental or physical incapacity, the clerk of the court shall issue a summons to be served on the trustee. The summons is returnable not less than ten (10) days from its date of issue.

Immediately following the return date set out on the summons, the circuit court shall hold a hearing on the matter alleged in the petition. After hearing the evidence and being fully advised, the court shall enter its findings and judgment.

If the court finds the trustee incapable of performing the duties of office, the clerk of the court shall certify a copy of the judgment to the county commissioners, which shall, within five (5) days, appoint a resident of the township as acting trustee of the township during the incapacity of the trustee.

The acting trustee shall execute and file a bond in an amount fixed by the county auditor. After taking the oath of office, the acting trustee has all the powers and duties of the trustee.

The acting trustee under this section is entitled to the salary and benefits provided by this article for the trustee. An incapacitated trustee is entitled to the minimum salary fixed by IC 36-6-6-10, for which no appropriation is necessary.

When an incapacitated trustee files a petition with the circuit court of the county alleging that he is restored to mental or physical ability to perform the duties of office, the court shall immediately hold a hearing on the matters alleged. After hearing the evidence and being fully advised, the court shall enter its findings and judgment.

If the court finds the trustee capable of resuming duties, the clerk of the court shall certify a copy of the judgment to the county executive, which shall, within five (5) days, revoke the appointment of the acting trustee. IC 36-6-4-16

#### OTHER VACANCIES

If a township trustee moves his residence from the township in which he was elected, a vacancy is thereby created in the office of township trustee in said township. (Opinions of Attorney General June 14, 1944)

The township trustee must reside within the township as provided in Article 6, Section 6 of the Constitution of the State of Indiana. The trustee forfeits office if the trustee ceases to be a resident of the township. IC 36-6-4-2

Officers that want to resign shall give written notice of the resignation to the circuit court clerk of the county containing the largest percentage of population of the political subdivision. IC 5-8-3.5-1

Generally, vacancies in the office of township trustee shall be filled by a party caucus of the same political party as the officer who vacated the office. See IC 3-13-10-2 for vacancies required to be filled by the county commissioners. Every trustee so appointed shall continue in office until his successor is elected and qualified. IC 3-13-10-8

If a vacancy occurs and there is no political party affiliation, the county auditor shall call a special session of the board of commissioners without delay to fill the vacancy. If the commissioners are already meeting, the appointment shall be made without delay. IC 3-13-10-2

When a vacancy has been created in the office of township trustee for the period of time between when the vacancy occurs and when the vacancy is filled, the chief deputy employee of the trustee assumes the duties of the township trustee. If no chief deputy employee exists, the chairman of the township board assumes the duties of the township trustee. IC 3-13-11-17, IC 3-13-11-12

Any person, who assumes the duties of any vacant office, has all of its rights and duties. IC 3-13-11-18

If an officer of a political subdivision does not take and file the oath required under IC 5-4-1-1 within thirty (30) days after the beginning of the officer's term, the office becomes vacant. IC 5-4-1-1.2

IC 5-4-1-1.2 does not apply to an individual appointed or elected to an office the establishment or qualifications of which are expressly provided for in the Constitution of the State of Indiana or the Constitution of the United States.

## QUALIFICATION

### Oath

Each trustee, before entering upon the duties of office, shall take an oath or affirmation before some person qualified to administer the same (such as Judge of the Circuit or Superior Court, Clerk of the Court, Judge of the City Court, City Clerk, Notary Public), for the faithful performance of duties. All trustees shall reside within their respective townships. (Indiana Constitution Article 6 Section 6) IC 36-6-4-2. An individual appointed or elected to an office of a political subdivision may take the oath required at any time after the individual's appointment or election. If an officer of a political subdivision does not take and file the oath required under IC 5-4-1-1 not later than thirty (30) days after the beginning of the officers term, the office becomes vacant. IC 5-4-1-1.2

IC 5-4-1-1.2 does not apply to an individual appointed or elected to an office the establishment or qualifications of which are expressly provided for in the Constitution of the State of Indiana or the Constitution of the United States.

### Bonding

The trustee shall file an individual official surety bond. The township board shall fix the amount of the bond as follows: (1) The amount of annual coverage must equal (\$30,000) thirty thousand dollars for each one million dollars (\$1,000,000) of receipts of the officer's office during the last complete fiscal year before the purchase of the bond, subject to subdivision (2). (2) The amount of annual coverage may not be less than thirty thousand dollars (\$30,000) nor more than three hundred thousand dollars (\$300,000) unless the fiscal body approves a greater amount of annual coverage for the officer or employee. The township board may, by resolution, authorize blanket bond coverage for the aforementioned. IC 5-4-1-18

The official bond shall be approved by the county auditor. IC 5-4-1-8

The bond shall be filed in the office of the county recorder in the county of residence of the trustee. IC 5-4-1-5.1

The trustee shall obtain an official bond before the commencement of his term of office. If the trustee fails to give the bond before that time, the trustee may not take office. IC 5-4-1-9

The official bond shall be executed by the principal and by two (2) or more freehold sureties or an authorized surety company. IC 5-4-1-13

We strongly recommend and encourage township officials to immediately obtain bond coverage for all employees that might be handling cash and related transactions. Furthermore, consideration should be given to obtaining crime insurance coverage.

A deputy of a political subdivision is an employee performing ministerial functions on behalf of an officer and is not required to take the oath prescribed in IC 5-4-1-1(a), however, if a chief deputy assumes the duties of an officer in a vacancy under IC 3-13-11-12, the chief deputy must take the oath required before entering the official duties of the office. IC 5-4-1-1

The State Board of Accounts is of the audit position continuation certificates or renewals should not be used in lieu of obtaining the required annual bond coverage.

## GROUP INSURANCE

A public employer may contract for group insurance in relation to its employees (full-time or part-time employees or a person who provides personal services to the unit under contract during the contract period) and retired employees by either purchasing policies of group insurance or by establishing a self-insurance program.

A public employer may pay part of the cost of group insurance, but shall pay a part of the cost of group life insurance for local employees.

For more information on group insurance, see IC 5-10-8.

## COMPENSATION AND EXPENSES

The township board shall set: (1) Salaries; (2) Wages; (3) Rates of hourly pay; and (4) Remuneration other than statutory allowances; of all officers and employees of the township. IC 36-6-6-10

We recommend that the township board set the salaries of township officials and employees in conjunction with the preparation and completion of the township budget.

The type of format for recording these salaries should be the existing form of Township Form 17. The salaries so fixed shall be recorded in the township board minutes.

The township board may not alter the salaries of elected or appointed officers during the fiscal year for which they are fixed, but it may add or eliminate other positions and change the salary of any other employee, if the necessary funds and appropriations are available. IC 36-6-6-10

IC 36-6-6-10 (c) provides subject to subsection (d) the township legislative body may reduce the salary of an elected or appointed official. However, the official is entitled to a salary not less than the salary fixed for the first year of the term of office that immediately preceded the current term of office.

IC 36-6-6-10 provides in part (i) In a year in which there is not an election of members to the township legislative body, the township legislative body may by unanimous vote reduce the salaries of the members of the township legislative body by any amount.

## OFFICE AND TELEPHONE EXPENSES

The annual appropriations of a township for the expenses of renting an office and telephone expenses must, as nearly as is possible, be equal to the actual cost of those items. If the township trustee uses a part of his residence as his office, the township board shall appropriate a reasonable sum for that office space.

The following audit position should cover all situations for reimbursement of telephone expenses:

1. A separate township office exists and has a telephone(s) listing in the telephone directory in the name of the township, 100% of the proper monthly telephone service billing and long distance township business calls may be paid.
2. The township office is in the home with a separate phone line for township business and that phone line is listed separately in the directory. The 100% reimbursement is available for township long distance business calls and also for the monthly billing.

3. If the township office is in the home, and the telephone (only phone) is in the township name in the phone directory, the additional cost of that phone being listed as a township phone is reimbursable. Up to 50% of the base monthly service billing may also be reimbursed if approved by the township board in accordance with IC 36-6-8-3. Additionally, 100% of all documented long distance township business calls may be reimbursed.

Please be advised IC 12-20-5.5-3 provides the township trustee shall ensure adequate access to township assistance services, including a published telephone number in the name of the township.

#### TELEPHONE IN TRUSTEE'S OFFICE

The rental of a telephone in the trustee's office may be paid from the Township Fund when the telephone is listed in the name of the township, such that the telephone is exempt from excise and sales tax.

#### MILEAGE AND TRAVEL

The township trustee is entitled to a sum for mileage in the performance of his official duties equal to the sum per mile paid to state officers and employees (IC 36-6-8-3). The State rate effective October 1, 2009 is \$.40 per mile. Mileage Claim Form Number 101 shall be properly completed, listing dates of authorized travel, details of travel, miles traveled, nature of business, etc., for reimbursements for mileage before payment is made.

Official Opinion 74 of the Indiana Attorney General, issued in 1953, concluded there is no statutory authority for payment of a fixed amount of travel allowance to public employees and that a public employer may not reimburse an employee for travel expense which is, in fact, not incurred by the employee. Also, there is no authority for a travel allowance to be paid without regard to the number of miles, if any, actually traveled.

Therefore, the State Board of Accounts is of the audit position that a fixed amount for travel allowance should not be paid. The prescribed method is to reimburse the employee for travel on the basis of a claim filed on Mileage Claim, Form 101.

#### TOWNSHIP VEHICLES AND BUILDINGS

IC 36-6-4-4 and IC 36-6-8-3 now provides a trustee may use a township vehicle if authorized by the township board for official duties. A trustee may not also claim mileage reimbursement when using a township vehicle for official duties. A township trustee shall maintain a mileage log when using a township vehicle.

No exception will be taken to authorized township vehicle purchases or leases, as long as the proper appropriation, bidding and disbursements procedures have been followed.

Any properly owned township vehicles other than fire and emergency medical services apparatus must have regularly maintained mileage logs which can be used to demonstrate that the vehicles are used for their designated purposes.

IC 36-9-17.5 provides for the cumulative township vehicle and building fund which is within the township maximum levy limitations. The legislative body of a township may levy a tax on all taxable property within the township in compliance with IC 6-1.1-41. The tax rate may not exceed five cents (\$0.05) on each one hundred dollars (\$100) of assessed valuation of property in the township for property taxes first due and payable before January 1, 2002, or one and sixty-seven hundredths cents (\$0.0167) on each one hundred dollars (\$100) as assessed valuation of property in the township for property taxes first due and payable after December 31, 2001. As the tax is collected, the tax shall be deposited in a qualified public depository or depositories and held in a special fund known as the cumulative township vehicle and building fund.

Notwithstanding any other law, the property tax limits imposed under IC 6-1.1-18.5-3 apply.

IC 36-9-17.5-2 states "A township may establish a cumulative township vehicle and building fund under IC 6-1.1-41 to provide money to:

- (1) acquire township vehicles;
- (2) purchase, construct, equip, and maintain buildings for public purposes;
- (3) acquire the land and any improvements on the land that are necessary for the construction of public buildings;
- (4) demolish any improvements on land acquired under this section and level, grade, and prepare the land for the construction of a public building;
- (5) acquire land or rights-of-way to be used as a public way or other means of ingress or egress to land acquired for the construction of a public building; and
- (6) improve or construct any public way or other means of ingress or egress to land acquired for the construction of a public building."

#### DUTIES OF THE TOWNSHIP TRUSTEE

The trustee of the civil township has certain specific duties to perform. Space will not permit a listing of all of the specific duties of a township trustee. Some of the most important and most frequently performed duties are listed herein:

1. Keep a written record of official proceedings (Township Form 14, General Record);
2. Manage all township property interest;
3. Keep township records open for public inspection;
4. Attend all meetings of the township board;
5. Receive and pay out township funds;
6. Examine and settle all accounts and demands chargeable against the township;
7. Administer township assistance;
8. Perform the duties of fence viewer;
9. Provide and maintain cemeteries;
10. Provide fire protection;
11. File an annual personnel report (Form 100R) with the State Board of Accounts;
12. Provide and maintain township parks and community centers;

13. Destroy detrimental plants, noxious weeds, and rank vegetation;
14. Provide insulin to the poor, IC 36-6-4-3;
15. Administer oaths when necessary in the discharge of official duties;
16. Appoint an attorney to represent the township in any proceeding in which the township is interested;
17. Enter into certain oil and gas leases of township property;
18. Authority to perform notarial acts (notary public) without receiving a fee, IC 33-42-5-1;
19. The trustee shall maintain general accounts showing the total of all township receipts and expenditures;
20. The trustee shall maintain a financial and appropriation record, which must include an itemized and accurate account of the township's financial affairs. IC 36-6-4-5
21. All public funds collected by the trustee shall be deposited in the depository designated therefore, on or before the first and fifteenth days of each month. IC 5-13-6-1
22. On the first Monday of each August the trustee shall post, in a conspicuous place near his office, a verified statement showing the indebtedness of the township in detail and giving the number and total amount of outstanding orders, warrants and accounts. IC 36-6-4-10
23. The township trustee shall present a complete report of all receipts and expenditures of the preceding calendar year, including the balance to the credit of each fund controlled by the trustee. If the trustee controls any money that is not included in a particular fund, then the trustee shall state all the facts concerning that money in the report. The report must be submitted to the township board on or before the third Tuesday after the first Monday in January of each year at the annual meeting. A copy of the annual report shall remain in the custody of the chairman of the township board who shall keep it open to inspection by taxpayers. Within ten (10) days after the township board's action on said report, the trustee shall file a copy of the report and its accompanying vouchers in the county auditor's office. IC 36-6-4-12, IC 36-6-6-9.

The state examiner shall require from every municipality and every state or local governmental unit, entity, or instrumentality financial reports covering the full period of each fiscal year. These reports shall be prepared, verified, and filed with the state examiner not later than sixty (60) days after the close of each fiscal year. The reports must be filed electronically, in a manner prescribed by the state examiner that is compatible with the technology employed by the political subdivision. IC 5-11-1-4

24. When the trustee prepares the annual report mentioned above, the trustee shall also prepare an abstract of receipts and disbursements on forms prescribed by the State Board of Accounts. The abstract shall include; (1) the sum of money in each fund of the township at the beginning of the year, (2) the sum of money received in each fund of the township during the year, (3) the sum of money paid from each fund of the township during the year, (4) the sum of money remaining in each township at the end of each year, (5) a statement of receipts, showing their source and, (6) a statement of expenditures, showing the combined gross payment, according to classification of expense to each person.

Within four (4) weeks after the third Tuesday following the first Monday in January, the trustee shall publish the abstract one time in each of two newspapers. IC 36-6-4-13, IC 5-3-1.

IC 5-3-1-4 states in part (d)" This subsection applies to notices published by officers of political subdivisions not covered by subsection (a) or (b). If there is only one (1) newspaper published in the political subdivision, then the notice shall be published in that newspaper. If no newspaper is published in the political subdivision, then publication shall be made in a newspaper published in the county and that circulates within the political subdivision."

25. Sale of township property - Complete detail and instructions for disposal of property may be found in Chapter 22.

If the property is personal property and it is one (1) item with an estimated value of one thousand dollars (\$1,000) or more; or it is more than one (1) item, with estimated total value of five thousand dollars (\$5,000) or more; the trustee may conduct the sale at a public auction after advertising the sale. If an auction is not conducted, the trustee shall sell the property at a public sale or by sealed bids delivered to the township office before the date of sale. All sales shall be to the highest responsible bidder. Advertisement of the sale shall be made in accordance with IC 5-3.

If the personal property is one (1) item with an estimated value less than one thousand dollars (\$1,000); or more than (1) item, with an estimated total value less than five thousand dollars (\$5,000); the trustee may sell the property at public or private sale. If the personal property is worthless, it may be demolished or junked. IC 5-22

26. At the expiration of his term of office the trustee shall deliver to the new trustee custody of all funds and property. IC 36-6-4-14
27. List of persons to whom taxing unit owes money - On or before June 1st and December 1st of each year, the disbursing officer of each political subdivision shall certify the name and address of each person who has money due him from the political subdivision to the treasurer of each county in which the political subdivision is located. Upon the receipt of this information, the county treasurer shall search his records to ascertain if any person so certified to him is delinquent in the payment of property taxes. IC 6-1.1-22-14



28. Withholding and application of funds from payment of delinquent taxes - If the county treasurer finds that a person whose name is certified to him is delinquent in the payment of his taxes, he shall certify the name of that person and the amount of delinquency to the official of the political subdivision who is to make payment to the person. The disbursing officer shall periodically make deductions from money due the person and shall pay the amount of these deductions to the county treasurer. IC 6-1.1-22-15

A county treasurer who receives funds that have been deducted from money due a person shall apply the funds to the delinquent taxes, penalties, and interest owed by that person until those items are paid in full. IC 6-1.1-22-17

29. A township trustee who knowingly or intentionally: (1) has a pecuniary interest in; or (2) derives a profit from; a contract or purchase connected with an action by the township that he serves, should file a Conflict of Interest form (Chapter 16).
30. A township trustee is purely a statutory officer with only such power and authority as the statutes vest in him. (State ex rel. Walkerton-Lincoln Tp. Consolidated School v. Citizens Nat. Bank, 1935, 100 Ind. App. 501, 193 N.E. 389)
31. The office of township trustee is a lucrative office and the trustee is prohibited by the Constitution of Indiana from holding any other lucrative office while serving as township trustee. (Bishop v. State, ex rel. Gruner, 1897, 149 Ind. 223 48 N.E. 1038; Creighton v. Piper, 1860, 14 Ind. 182)
32. All local investment officers shall reconcile at least monthly the balance of public funds, as disclosed by the records of the local officers, with the balance statements provided by the respective depositories. IC 5-13-6-1
33. Within thirty (30) days after taking office, the trustee shall designate a person who shall perform the trustee's duties whenever the trustee is absent from the township or is incapable of performing the trustee's functions if the trustee becomes incapacitated. The trustee shall give notice of the designation to the chairman of the township board, the county sheriff, and any other persons that the trustee chooses. The designee shall have all the powers of the trustee. The trustee is responsible for all acts of the designee. The trustee may change the designee under this section at any time.

The designee shall perform the trustee's duties until: (1) the trustee is no longer absent from the township; or (2) an acting trustee is appointed by the county commissioners under section 16 of this chapter. IC 36-6-4-18

34. Each office is a distribution site for registration by mail forms. IC 3-7-24
35. During the annual meeting required by IC 5-13-7, the investment officer shall make a written report to the investing officer's local board of finance summarizing the political subdivision's investments during the previous calendar year. The report must contain the name of each financial institution, government agency or instrumentality, or other person with whom the political subdivision invested money during the previous calendar year. The local board of finance shall do the following at the meeting: (1) review the report; and (2) review the overall investment policy of the political subdivision. IC 5-13-7-7
36. A township trustee can subscribe and administer oaths and take acknowledgments. IC 33-16-4-1