

THE COUNTY BULLETIN

And Uniform Compliance Guidelines

ISSUED BY STATE BOARD OF ACCOUNTS

Vol. No. 370

October 2009

REMINDER OF ORDER OF BUSINESS

October

- 12 Columbus Day - Legal Holiday (IC 1-1-9-1)
 - 15 Last day to make pension report and payment for third quarter by counties participating in Public Employees' Retirement Fund.
 - 20 Last day to report and make payment of State Income Tax withheld in September to Indiana Department of Revenue.
 - 28, 29, 30 County Auditor's Fall Conference – Indianapolis, Indiana
 - 31 Last day to file quarterly unemployment compensation report with the Indiana Department of Workforce Development.
- Last day to report and make payment of balance of Federal Income Tax withheld in the third quarter to Internal Revenue Service.

November

- 1 Last day for county auditor to certify to the division of state court administration the amount, if any, the county will be providing to supplement the judges salary during the ensuing calendar year. (IC 33-38-5-6(b))
- 2 Last date for County Board of Tax Adjustment [except Marion County and in a county containing a second class city (November 1)] to complete its duties. (IC 6-1.1-17-9(a))
- 10 Last day for paying second installment of taxes without penalty. Start preparing for settlement of second installment tax collections. (IC 6-1.1-37-10)
- 11 Veterans' Day - Legal Holiday. (IC 1-1-9-1)
- 20 Last day to report and make payment of State Income Tax withheld in October to Indiana Department of Revenue.
- 26 Thanksgiving Day - Legal Holiday. (IC 1-1-9-1)

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REMINDER OF ORDER OF BUSINESS
(Continued)

December

- 1 On or before this date, certify names and addresses of persons who have money due to them for salaries, wages or other reasons to County Treasurer, for determining if such persons owe delinquent taxes. (IC 6-1.1-22-14)
- Last date for County Board of Tax Adjustment in Marion County and in a county containing a second class city to complete its duties. (IC 6-1.1-17-9(a))
- 20 Last day to report and make payment of State Income Tax withheld in November to Indiana Department of Revenue.
- 25 MERRY CHRISTMAS!! Legal Holiday. (IC 1-1-9-1)
- 31 Review year-end duties.
- Post and close all records completely and promptly.
- The Auditor should balance with the Treasurer and verify the amount of cash in the Treasurer's office, if field examiners or a successor Treasurer are not available to verify the cash count.

RECORDERS' TRAINING

IC 36-2-11-2.5 requires that county recorders receive training. The training courses are to be developed by the Association of Indiana Counties and approved by State Board of Accounts. The State Board of Accounts will not take audit exception to the recorders perpetuation fund being used for training that is related to preservation of records and the improvement of record keeping systems. However, training that is not related to record keeping should be paid using appropriated county general funds.

For example, training on budgeting, human resources, office management, etc. should not be paid using perpetuation funds. In situations where there are a variety of topics offered, some related to recordkeeping and some not, allocating costs between county general fund and the record perpetuation fund would be appropriate. The allocation method used should be reasonable and documented. We will not take exception to payment from perpetuation fund where recordkeeping is the training focus but there is de minimus nonrecordkeeping training provided.

Payments for mileage and lodging for the Recorders Annual State Called Meeting by the State Board of Accounts are still to be paid from county general fund and do not have to be appropriated.

NEW STATE MILEAGE RATE

Effective October 1, 2009, the state mileage rate is lowered to 40 cents per mile.

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POSTING OF CERTAIN CLAIMS TO WEB SITE

As discussed in the August 2009 County Bulletin, Public Law 141, in regard to publication of notices, amends IC 6-1.1-15-11, IC 36-2-6-3 and IC 36-2-6-4.5. Claims under these codes are no longer required to be published unless it is an allowance made by the court. To clarify further, those claims that are not required to be published are also not required to be posted on a newspaper WEB site.

PUBLIC WORKS PROJECTS COSTING LESS THAN \$150,000

We will not take audit exception to expenditures for projects under \$150,000 that maintain the existing condition of the asset or restore the asset to normal operating efficiency and which might qualify as routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property under IC 36-1-12-4.9. Included in our audit position could be expenditures for the replacement and repair of elevators, flooring, ceiling, tile, bathroom fixtures, windows, sidewalks, parking lots, and roofs which would not be part of another public works project. Additionally, the costs associated with reconfiguring the interior of offices (additions/deletions of wiring for electrical outlets, lighting, data lines, and telephones, cubicle walls, etc) and reconfiguring offices with movable walls which would not be part of another public works project, could be considered. Not included would be additions to the structure, reconfiguring offices with permanent walls, change of purpose of an area that involves substantial addition or removal of plumbing or gas lines (adding a kitchen area or bathroom), addition of elevator shafts, parking lots and other like changes to the interior or exterior that involve changes to the structural integrity of the building or improvements to real property, etc. or expenditures for which a determination has been made of the applicability of other provisions of the Public Works Law, IC 36-1-12-1 et seq. Our audit position is with the assumption a determination has been made by the governmental unit in a public meeting of the applicability of IC 36-1-12-4.9 to the proposed public works project.

GENERAL FORM 101 - MILEAGE CLAIM

General Form No.101, Mileage Claim, is a general form for use of all governmental units and is to be used by every local public official claiming mileage.

It is to be noted that this is a mileage claim form only. This form is not to be used by officials claiming reimbursement for authorized traveling expenses, such as hotels, meals, etc., which should be properly itemized on Accounts Payable Voucher, Form No. 17, with receipts attached. Mileage in connection with such traveling expenses may also be claimed on Form No. 17.

PENALTY ON DELINQUENT DRAINAGE ASSESSMENTS

Pursuant to IC 36-9-27-86(c) "assessments" shall be regarded as taxes within the meaning of IC 6-1.1, and the manner of collection shall be in accordance with, the Property Tax Collection Law of IC 61.1 except for the following:

- (1) An assessment is not the personal obligation of the owner of the land affected by the assessment, and only the land actually affected by an assessment shall be sold for delinquency.
- (2) An annual assessment for periodic maintenance that is not more than twenty-five dollars (\$25) shall be paid at the first time after the assessment when general property taxes are payable.

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PENALTY ON DELINQUENT DRAINAGE ASSESSMENTS (Continued)

- (3) An assessment of less than five dollars (\$5) is increased to five dollars (\$5). The difference between the actual assessment and the five dollar (\$5) amount that appears on the statement is a low assessment processing charge. The low assessment processing charge is considered a part of the assessment.
- (4) The exemptions under IC 6-1.1-10-2, IC 6-1.1-10-4 and IC 6-1.1-10-5 do not apply to assessments imposed under IC 36-9-27.

SALARY ORDINANCES

A separate ordinance must be adopted by the county council at fixing the number of employees and the rates of salaries or wages to be paid officers and employees of the county.

IC 36-2-5-11(c) states: " At its annual meeting under IC 36-2-3-7(b)(2), the county fiscal body shall consider the statements and recommendations submitted by the county executive under section 4(b) of this chapter and shall then adopt an ordinance, separate from those adopted under subsection (b), fixing:

- (1) the compensation of all officers, deputies and other employees subject to this chapter; and;
- (2) the number of deputies and other employees for each office, department, commission, or agency, except part-time and hourly rated employees, whose employment shall be limited only by the amount of funds appropriated to pay their compensation."

The adoption of the Ordinance of Appropriations by the council does not constitute an action fixing the rates of salaries and wages; a separate ordinance is required.

In regard to change of compensation of officials and employees IC 36-2-5-13 states: (a) Except as provided in subsection (b), the compensation of an elected county officer may not be changed in the year for which it is fixed. The compensation of other county officers, deputies, and employees or the number of each may be changed at any time on:

- (1) the application of the county fiscal body or the affected officer, department, commission, or agency; and
- (2) a majority vote of the county fiscal body.

(b) In the year in which a newly elected county officer takes office, the county fiscal body may at any time change the compensation for holding the county office for that year if:

- (1) the county officer requests the compensation change or, in the case of the county executive body, a majority of the county executive body requests the change; and
- (2) the county fiscal body votes to approve the change."

To change the salaries of other officers, deputies, assistants and employees or the number of each, an amended Form 144, Statement of Salaries and Wages Proposed to be Paid Officers and Employees, should be filed by the officer or department head, submitted to the board of the county commissioners for review and recommendations and then submitted to the county council for consideration.

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ALLOCATION OF INTEREST TO GENERAL AND HIGHWAY FUNDS

The county treasurer may invest tax collections pending distribution to political subdivision. The interest received is receipted to the county general fund or any other fund from which expenses incurred in the maintenance of county highways may be paid. Specifically IC 5-13-9-6(c) and (d) state:

“(c) Each county treasurer, if authorized by the board of county commissioners, may invest tax collections under this chapter pending distribution of the collections to political subdivisions. These investments may not:

- (1) exceed the amount available after giving consideration to taxes which may need to be advanced to any political subdivision; or
- (2) be made in deposit accounts or repurchase agreements, the maturity dates of which are later than the time when the tax collections are required by law to be distributed to political subdivisions

(d) The interest received on the investments made under subsection (c) shall be receipted to the county general fund or any other fund from which expenses incurred in the maintenance of county highways may be paid.”

The statute merely states that the county council shall determine the allocation of this interest among the general fund and the various highway funds into which the interest may be deposited. It does not include any specific procedures for the allocation.

The definition of tax collections would include property taxes, financial institution taxes, and any license excise taxes. Since most county treasurers invest such collections with other county funds on hand in total monies on deposit type investments, it is almost impossible to be able to arrive at an exact amount of interest earned on tax collections. Only a good estimate can be made.

We recommend the following procedures be followed if the county council determines to allocate interest on tax collections to highway funds:

1. Determine total interest earnings for the county general fund in the prior year.
2. Analyze all county general fund interest by month for the prior year. Determine how much interest was attributable to tax collections investments versus other collections. Most of the tax collections are invested in the periods of April, May, June, and October, November, and December.
3. Take into consideration all advance tax draws made to political subdivisions prior to settlement.
4. Upon completion of this analysis, arrive at a dollar amount which was attributable to the investment of tax collections and a percentage of tax collections invested to total monies invested.
5. Report this amount to the County Council with the following information:
 - a. This amount was for a prior year.
 - b. Since interest rates fluctuate, this amount could be lower this year.
 - c. Advance draws could increase this year resulting in lower interest earnings.
 - d. Interest is earned throughout the year and will not be available for distribution all at once.
6. Instruct the county council to arrive at a dollar amount of interest which it wants placed in the highway fund or funds.

We recommend the interest be deposited directly to the highway fund or funds when interest is received from the financial institutions based upon the percentage arrived at in Step No. 4 until the amount set by the county council has been reached.

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TAX SALE - MINIMUM SALES PRICE -TAX SALE SURPLUS

IC 6-1.1-24-2(a)(3) states "... that the tracts of real property being sold may not be sold for an amount which is less than the sum of:

- A. the delinquent taxes and special assessments on each tract or item of real property;
- B. the taxes and special assessments on each tract or item of real property that are due and payable in the year of the sale, whether or not they are delinquent;
- C. all penalties due on the delinquencies;
- D. an amount prescribed by the county auditor that equals the sum of: 1. the greater of twenty-five dollars (\$25) or postage and publication costs; and 2. any other actual costs incurred by the county that are directly attributable to the tax sale; and
- E. any unpaid costs due under subsection (b) from a prior tax sale.

IC 6-1.1-24-7(a) states in part: "The county treasurer shall apply the payment in the following manner:

- 1. First, to the taxes, special assessments, penalties, and cost described in IC 6-1.1-24-5(e) of this chapter;
- 2. Second, to other delinquent property taxes in the manner provided in IC 6-1.1-23-5(b); and
- 3. Third, to a separate "tax sale surplus fund."

PUBLIC PURCHASES CONTRACTS-RENEWAL

Subject to funds being appropriated and available under IC 5-22-17-5 and with the agreement of the contractor and the purchasing agency, a contract may be renewed any number of times. However, the term of the new contract may not be longer than the term of the original contract. (IC 5-22-17-4)

When the fiscal body of the governmental body makes a determination that funds are not appropriated or otherwise available to support continuation of performance of a contract, the contract is considered canceled. (IC 5-22-17-5)

IC 5-22-17-4 also states: "A contract that contains a provision for escalation of the price of the contract may be renewed under this section if the escalation is computed using:

- 1. a commonly accepted index in the contract; or
- 2. a formula set forth in the contract."

MONEY MARKET MUTUAL FUNDS

IC 5-13-9-2.5 states:

"(a) An officer designated in section 1 of this chapter (*county treasurer*) may invest or reinvest funds that are held by the officer and available for investment in investments commonly known as money market mutual funds that are in the form of securities of or interests in an open-end, no-load, management-type investment company or investment trust registered under the provisions of the federal Investment Company Act of 1940, as amended (15 U.S.C. 80a et seq.).

MONEY MARKET MUTUAL FUNDS (Continued)

(b) The investments described in subsection (a) may not exceed fifty percent (50%) of the funds held by the officer and available for investment. This limitation does not apply to investments made by a county treasurer between: (1) the date that is ten (10) days before each property tax installment due date described in IC 6-1.1-22-9; and (2) the property tax settlement distribution date described in IC 6-1.1-27-1(b).

(c) The investments described in subsection (a) shall be made through depositories designated by the state board of finance as depositories for state deposits under IC 5-13-9.5.

(d) The portfolio of an investment company or investment trust described in subsection (a) must be limited to the following:

(1) Direct obligations of the United States.

(2) Obligations issued by any of the following: (A) A federal agency. (B) A federal instrumentality. (C) A federal government sponsored enterprise.

(3) Repurchase agreements fully collateralized by obligations described in subdivision (1) or (2).

(e) The form of securities of or interests in an investment company or investment trust described in subsection (a) must be rated as one (1) of the following:

(1) AAAM, or its equivalent, by Standard and Poor's Corporation or its successor.

(2) Aaa, or its equivalent, by Moody's Investors Service, Inc. or its successor.

(f) The form of securities in an investment company or investment trust described in subsection (a) is considered to have a stated final maturity of one (1) day.

(g) The state board of accounts may rely on transaction confirmations evidencing ownership of the form of securities of or interests in an investment company or investment trust described in subsection (a)."

COPY FEES

Except where authorized by statute, IC 5-14-3-8(d) states: "This subsection applies to a public agency that is not a state agency. The fiscal body (as defined in IC 36-1-2-6) of the public agency, or the governing body, if there is no fiscal body, shall establish a fee schedule for the certification or copying of documents. The fee for certification of documents may not exceed five dollars (\$5) per document. The fee for copying documents may not exceed the greater of:

(1) ten cents (\$0.10) per page for copies that are not color copies or twenty-five cents (\$0.25) per page for color copies; or

(2) the actual cost to the agency of copying the document. As used in this subsection, "actual cost" means the cost of paper and the per-page cost for use of copying or facsimile equipment and does not include labor costs or overhead costs. A fee established under this subsection must be uniform throughout the public agency and uniform to all purchasers."

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QUESTIONS AND ANSWERS FROM COUNTY AUDITORS ANNUAL CONFERENCE

Question #1: How long do you have to keep bids (not approved) for bridge work? Highway?

Answer #1: County Auditor's record retention schedule states:

Form 96 – Contractor's bid for public work may be destroyed 6 calendar years after completion of project and audit and satisfaction of unsettled charges.

Question #2: It would be very handy for new and old Auditor's alike to have a list of what items would customarily appear in the 100, 200, 300 and 400 fund account categories. We always wonder about computer equipment – should it be a 3 or 4, is the purchase of forks, plates etc. in the jail a 3 or 4. It is even difficult for field examiners to assist in the decision of which line item to place into and pay out of.

Answer #2: The Accounting and Uniform Compliance Guidelines Manual, beginning on page 8-3, provides some guidance. Difficulties occur when you have purchases that are partially 2 or more categories like computer hardware, software, and technical assistance to convert, train and install a system.

Question #3: We adopted the installment payment plan for 2007 pay 2008. How can we close out the family and children fund and children's psychiatric residential treatment services fund?

Answer #3: Close these funds into levy excess on April 1st. Form 22 receipts from settlements after that date for either of these funds should be deposited into levy excess.

Question #4: We are a CEDIT homestead credit county. Our county council is talking about changing this to CEDIT regular distributions in order to give part of the CEDIT money to our Economic Growth Council. Can They? How? When?

Answer #4: IC 6-3.5-7-5(d) allows for imposition and rescinding of CEDIT by the appropriate body by adopting an ordinance after March 31 but before Aug 1 of the year. Such ordinance would take effect Oct 1 of this year. Therefore, it appears the CEDIT HSC adopted under IC 6-3.5-7-5(p) could be rescinded by ordinance while regular CEDIT could be adopted by ordinance prior to Aug 1 for funding economic development purposes. We are not familiar with an Economic Growth Council and we do not find specific statutory guidance on such an entity.

Question #5: IC 12-29 Community Mental Health – Can you explain the process? How do we know who providers are? Is a contract required with providers? Funding?

Answer #5: A County must fund the operation of community mental health centers in the amount determined under IC 12-29-2-2 (b) unless a lower tax levy amount is adequate to fulfill the county's financial obligations under IC 12-29-2. You do not have to be concerned about providers or have contracts with them. Just fund the community mental health center according to IC 12-29-2-2 (b).

Question #6: Jury Pay for employees: What is the proper procedure for paying employees who are called and/or serve on a jury? Per Diem? Mileage?

Answer #6: If allowed by county policy, the employee may be paid county pay or per diem (not both) and mileage.

Question #7: After a budget is approved – If cash revenues decline and the cash balance does not maintain (or fund) the budget – What are we legally to do?

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QUESTIONS AND ANSWERS FROM COUNTY AUDITORS ANNUAL CONFERENCE (Continued)

- Answer #7:** The County Council may borrow temporarily in accordance with IC 36-1-8-4. This requires repayment of the loan between funds. Rainy day funds may be appropriated and used to pay expenses. DLGF may be aware of more options like applying for distressed unit status.
- Question #8:** Is there any further instruction on the remaining rebate checks which exceed \$10, and were returned by the post office?
- Answer #8:** After 1 year, you may submit those balances to the Attorney General's office as unclaimed property.
- Question #9:** I was told early this year not to forward the funds to the AG, IN unclaimed because there was a legislation being introduced to apply the rebate to the associated parcel tax bill.
- Answer #9:** Legislation to that effect did not pass.
- Question #10:** The daily meal cost is \$26.00 per day at a more than 1 day conference (overnight) stay. Do you get a flat \$26.00 or do you get reimbursed the actual cost up to \$26.00 per day?
- Answer #10:** The answer depends on whether the employee or officer is traveling pursuant to county policy or a state called meeting statute. IC 5-11-14-1 for State Board of Accounts called meetings allows for reimbursement of actual meals purchased as set by the county council. Meetings called by the Department of Local Government Finance (DLGF) under IC 6-1.1-35, authorize reimbursements in an amount not less than the allowance for state employees and not more than the federal employee reimbursement rate as set by the county council. IC 3-6-4.2-14 provides for reimbursement to county election officials called to a meeting by the Election Division of the Secretary of State's Office in the amount of \$24 per day.
- Question #11:** What's the definition of Resolution? What's the definition of ordinance? What's the difference between the two?
- Answer #11:** An ordinance is a decree, order, rule, regulation, law or edict. IC 36-1-4 regarding legislative powers covers the power to adopt, codify and enforce ordinances. A resolution is defined as a firm decision to do something. It Does not quite seem to rise to the level of local law. However, we respect both during an audit of the county.
- Question #12:** IC 6-1.1-24-1(a) reads: "On or before July 1 of each year or fifty-one (51) days after the tax payment due date, the county treasurer (or county executive, in the case of property described in subdivision (2)) shall certify to the county auditor a list of real property..." When real estate tax bills are due after May 10th of any given year is the meaning of this statute that the certified tax sale list can be certified to the Auditor's Office on or before 51 days after the due date or must we wait exactly 51 days before certifying the list? To have to wait exactly 51 days after the due date for late tax bills forces a county to have a very late tax sale and it doesn't seem consistent with the first part of that statute that allows a county to certify the list on or before July 1st (52 days) if the tax bills are due on May 10th.
- Answer #12:** Our audit position is that this statute allows certification on or before 51 days after the tax due date.
- Question #13:** We require an invoice for encumbrances not a purchase order because we have seen the \$ amount change on an invoice. So we can accept a purchase order?

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QUESTIONS AND ANSWERS FROM COUNTY AUDITORS ANNUAL CONFERENCE (Continued)

Answer #13: Yes, a purchase order is an estimate of the actual cost. Any excess encumbrance over actual invoice(s) would just revert.

Question #14: Exactly when is an ordinance needed for making a new fund to keep record keeping easier?

Answer #14: All funds must be established by statute or ordinance. The "New funds" article in the County Bulletin, Volume 331, page 4 describes the needed content of the ordinance.

Question #15: Do all checks that are 2 years old and not cashed have to be posted as unclaimed property or just those checks that are returned and we can't find the address of the owner?

Answer #15: All could become unclaimed property. If the county is holding the funds or owes the funds for over 1 year and the last known address is in Indiana you should consider abandoned and remit to the Attorney General.

Question #16: Our county on occasion, will pay expenses from a different budget classification. For example a "500 series" – Miscellaneous category when the fund does not require appropriation. Is this okay?

Answer #16: No, expenses must be classified properly for financial reporting regardless of budget requirements. Page 5-9 of the Accounting and Uniform Compliance Guidelines Manual describes "500" expense accounts as "non-budgeted expenditures." These are really not disbursements. It includes items like purchase of investments, petty cash, and cash change funds.

Question #17: What is the State Board of Accounts opinion of us receiving gifts from supply vendors such as Quill or Office Depot? We receive items such as candy, cookies, duffel bags, electronic gadgets, etc. These items are free and come with the supplies we order. These items (except for the candy and cookies – we eat them) are given to the employees as prizes.

Answer #17: The free gifts belong to the county and must be used in the public interest or disposed of as surplus property.

Question #18: When Probation places a child – does the County need to have a (4 B contract) or something like it in order to get billing within 60 days instead of two years later.

Answer #18: The county must have a contract with the facility for the services (4B or Not). We recommend the county include terms for submitting claims in their contracts.

Question #19: BMV Refunds on boat registration fees – A taxpayer was sent to my office (Auditor's) by the local BMV branch to file for a refund on boat excise. This taxpayer sold his boat, and now is asking for reimbursement of excise paid. How is this handled? How can the Auditor's office prove "sale" of this boat, and so we pro-rate a refund? It seems to me this refund should be handled by the BMV and then reported to the counties as a deduction the same way revenue is reported to counties.

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QUESTIONS AND ANSWERS FROM COUNTY AUDITORS ANNUAL CONFERENCE (Continued)

- Answer #19:** Per the Accounting and Uniform Compliance Guidelines Manual for County Auditor's, page 9-33. For a refund of boat excise tax the owner of a boat that is destroyed in a year must return to the BMV with: 1. A request for refund, 2. A statement of proof of destruction on affidavit, 3. Tax payment form for the boat. The owner is entitled to a refund of 10% per calendar month remaining on the registration not to exceed 90% of the excise tax paid. If approved by the BMV the tax payer will bring you form 17BR which will include the refund amount. You should process the claim as you would any property tax refund.
- Question #20:** When a Mobile Home is being transferred and needs a permit prior to current year tax rate and after January 15th, what procedure should be done? Do we calculate a current bill using last year's rates, even though we have not mailed our current tax bill? Can the Treasurer issue a permit if all delinquent taxes are paid current and the name of the new owner is in the tax system to be mailed with regular billing?
- Answer #20:** IC 6-1.1-7-10(c) states: " A county treasurer shall issue a permit which is required to either move, or transfer the title to, a mobile home if the taxes due on the mobile home have been paid..." We recommend the treasurer calculate a current year estimate of taxes and collect that amount.
- Question #21:** We have several departments that make their hotel reservation for county travel on Priceline.com or some other internet site. They have a receipt from the internet, but are unable to provide an actual hotel bill. Is this acceptable?
- Answer #21:** Internet receipt is acceptable with evidence of actual travel.
- Question #22:** Conflict of Interest – our animal warden's husband has a lawn mowing business and mows the lawn at the animal shelter. Should the animal warden complete a conflict of interest statement? We have an employee in the Auditor's office whose husband's construction company does drainage work for the surveyor. Should the Auditor's office employee complete a conflict of interest statement?
- Answer #22:** If advised to do so by the county attorney, these employees should file conflict of interest statements. We would always recommend filing if the employee is unsure.
- Question #23:** Copies – what should we be charging for copies? We currently charge 25 cents, but our attorney says that is too much. We have an ordinance in place stating .25 cents.
- Answer #23:** Per IC 5-14-3-8(d) a fee for copying documents may not exceed the greater of \$0.10 per page unless color copy which is 25 cents or the actual costs.
- Question #24:** Our electric company has a program called "Operation Round Up", they round up the utility bills to the nearest dollar, and that amount goes to help local charitable organizations. It is optional that we participate. Is it ok for the County to do this?
- Answer #24:** No, Uniform Compliance Guidelines prohibit donation of public funds. You can find the guideline in the Accounting and Uniform Compliance Guidelines Manual for County Auditors, Chapter 14.
- Question #25:** Do the commissioners approve the court claims? Does that include probation user fee and home detention funds? Please explain which court claims need to be advertised and when?

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QUESTIONS AND ANSWERS FROM COUNTY AUDITORS ANNUAL CONFERENCE (Continued)

Answer #25: The change in law on what claims need to be published does not change the approval process. So claims that are approved by the commissioners do not require publishing; claims approved by the courts are published. Such funds and departments under the court's allowance may be different in different counties. This depends in whether or not the court has jurisdiction and is approving the claims. Under the *Accounting and Uniform Guidelines for County Auditor's*, Chapter 7, page 4, court claims are discussed. It says in part: The judge of each court is empowered to allow claims or vouchers of the court, including offices departments and institutions under jurisdiction of the court, such as court administrator, probation department and juvenile detention center (These are examples). Claims or vouchers of the court are not subject to allowance by the board of county commissioners. We will not take exception if this is followed. IC 36-2-6-3 describes when court claims are to be published. You are to publish all allowances made by a court at least 3 days before issuance of warrants and publish all allowances made by court within 60 days after allowance is made.

Question #26: Legal Advertising of Claims – Please define what is considered allowance made by courts of the county? Is public defender and prosecutor considered allowance made by court? Does this mean suppliers and services in county general budget paid for circuit and superior court?

Answer #26: This does affect the disbursement of funds from the county general fund budgets of the courts as well as disbursements from other funds. Keep in mind this does not change how you process approval of claims. This changes publication requirements. See the answer to the question above also.

Question #27: Since claims will not need to be advertised, will we need to prepare any kind of a document for the public to view prior to claims being approved by commissioners?

Answer #27: There are no requirements to prepare any additional documents.

Question #28: Can we pay for valet parking on a travel claim?

Answer #28: Reimbursement of parking and other travel expenses should be addressed within the county's policies.

Question #29: Do commissioners still need to approve the claims?

Answer #29: Yes, with the exception of departments and institutions under jurisdiction of the court, such as court administrator, probation department and juvenile detention center claims or vouchers of the court are not subject to allowance by the board of county commissioners.

Question #30: In the new legislation presentation it states that the filing of the annual report changed from 30 to 60 days. Does this include the requirement to advertise by January 30th or just file with the SBOA? I hope both!!!

Answer #30: IC 36-2-2-19 requires that at its second regular meeting each year, the executive shall make an accurate statement of the county's receipts and expenditures during the preceding year. This statement shall be published in the manner prescribed by IC 5-3-1. So it is the timing of the second meeting that will be the basis for the timing of the publication.

Question #31: Does the 7 point type described in HEA 1230 affect tax sale notices as well?

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QUESTIONS AND ANSWERS FROM COUNTY AUDITORS ANNUAL CONFERENCE (Continued)

Answer #31: It is our position that this would apply to tax sale notices published. IC 6-1.1-24-3 requires that the auditor publish the notice in accordance with IC 5-3-1-4 this section is part of the chapter that defines publication procedures which includes IC 5-3-1-1 where the requirement for 7 point type is found.

Question #32: When advertising any kind of legal in the local paper (additional appropriations, bids, etc.), does it have to be placed on the news internet website?

Answer #32: If the statute for advertising requires publication in accordance with IC 5-3, then if the newspaper has an internet site it must be posted on the internet site.

Question #33: How does a county increase the E-911 land line fee charge? Ours has been \$1.69 for several years.

Answer #33: IC 36-8-16-7 allows for a fee change through an ordinance but the county must follow statutory provisions that are found in IC 36-8-16-6 and IC 36-8-16-7.5. This may be done only once in a calendar year.

Question #34: My two new Commissioners are farmers and would like to meet only once a month, especially during planting and harvesting. I was asked by 1 if it was a law that bills are paid on the 1st and the 15th, since they have to approve 2 sets of claims. The same goes for payrolls, every other week.

Answer #34: IC 36-2-2-6, states that the executive shall hold a regular meeting at least once each month and at other times as needed to conduct all necessary business. Dates of regular meetings shall be established by resolution at the first meeting in January of each year. So you must work together to coordinate meetings with timely payment of bills.

QUESTIONS AND ANSWERS FROM COUNTY CLERKS ANNUAL CONFERENCE

Question #1: Is there a listing somewhere that tells us all of the forms that are available for us to order?

Answer #1: For state forms go online to www.in.gov/icpr on-line catalog. A partial list of forms for local offices is contained in the applicable Accounting and Uniform Compliance Guidelines Manual.

Question #2: When back scanning files before the social security privacy act was enacted, do we scan those files as confidential? Example – Probable Cause

Answer #2: If the scanning is just for the purposes of retention, you do not need to protect any SSN's prior to 1/1/2005. If however, the goal is to eventually post the documents online (not permissible as of yet but in future probably will be) scan with the number protected.

Question #3: Change of Venue – The \$2.00 that may be charged to the sending county for each court entry – Can this fee be charged if there was no person from the clerk's office in attendance in court or if there was just a court entry completed by the court on the CCS?

Answer #3: No, per IC 34-35-5-2 and IC 34-35-5-8 the fee is for each day the clerk is in attendance at court. Therefore, you should not charge if the clerk or deputy did not attend court.

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QUESTIONS AND ANSWERS FROM COUNTY CLERKS ANNUAL CONFERENCE - (Continued)

Question #4: Please clarify that an additional \$10.00 per additional defendant name is charged, not an additional \$10.00 per additional address. Example – \$149.00 Civil Case and \$10.00 first additional defendant, \$10.00 for 2nd additional defendant a total of \$169.00. However, two addresses to serve per defendant giving a total of 6 addresses for service.

Answer #4: Yes, this fee is only to be charged per defendant not address.

Question #5: The Bond Administrative Fee on 10% bonds. Can this fee be collected when the case is dismissed?

Answer #5: No, per IC 35-33-8-3.2(a) administrative and other fees and costs can only be retained upon conviction with the exception of special death benefit fee and the costs of a public defender provided which are specifically allowed in this code.

Question #6: Individuals posting cash bonds at the Sheriff's Department are basically given a receipt for the money. If paid thru clerk's office there is a bond form, signed by parties that say monies will/could be used for payment of judgment. Can judge stipulate judgment paid from receipt only? The person posting bond says money for appearance only not payment of fines and costs.

Answer #6: IC 35-33-8-3.2(a) A court may admit a defendant to bail and impose any of the following conditions...(1) If court requires the defendant to deposit cash or cash and another form of security as bail, the court may require the defendant and each person who makes the deposit on behalf of the defendant to execute an agreement that allows the court to retain all or part of the cash or securities to pay fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted... (e) with the approval of the clerk of the court the county sheriff may collect the bail posted under this section... (2) Require the defendant to execute (a) a bail bond by depositing securities with the clerk of court in an amount not less than 10% of the bail; and an agreement that allows the court to retain all or a part of the cash or securities to pay fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted.

The form is a term of the bail agreement and it isn't that the court can't order that the bail be used to pay costs and fees but maybe shouldn't without the written agreement. We recommend you not allow the Sheriff to collect bail on your behalf unless he uses the form to disclose that the bail may be used to pay costs and fees.

Question #7: Can you explain to us who is allowed to open a confidential envelope in a file? Is it a judge, attorney, clerk staff or any of the parties? If anyone?

Answer #7: Administrative Rule 9(b) states that certain people may have greater access to the file beyond the public. Listed in that section are: court, court agency or clerk of court employees, private or governmental persons or entities who assist a court in providing court services (psychological consult for criminal case) public agencies whose access to court records is defined by other statutes, rules, orders or policies (law enforcement, BMV) or the parties to a cause or their lawyers with respect to their own case only the cases where the attorney has appeared. Ultimately the judge decides who can gain access to the sealed or confidential files. Sealed files under IC 5-14-3-5.5 usually have parameters spelled out. Confidential records under Administrative Rule 9(g) are governed by statute or the judge. No one has automatic access except the judge.

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QUESTIONS AND ANSWERS FROM COUNTY CLERKS ANNUAL CONFERENCE - (Continued)

Question #8: Filings on Appeals – Who sends the transcript and or records after they have already been sent to the Court of Appeals? An inmate had requested the judge to sign an order to have his court reporter send it? The judge was unsure whether he had to or not...Also when all records are “missing” from the flat file but are noted on the CCS is it the clerks responsibility to locate after it has already been sent to court of appeals....just gone, vanished in thin air..missing. MIA!!!

Answer #8: The clerk is responsible for maintaining the court records. The clerk should have policies in place to follow if and when you have found there are missing records.

Appellate Rule 12 is applicable. It states in part: 1. Unless the Court of Appeals orders otherwise the trial court clerk shall retain the clerk’s record throughout the appeal. A party can request a copy of the clerk’s record or a portion thereof, subject to paying copying charges, which a court could waive in pauper cases. (If the clerk’s record has been transmitted to the Court of Appeals, the party would have to contact the Clerk of the Court of Appeals.) 2. A party may withdraw the transcript or, at the clerk’s option, a copy, at no extra cost, from the trial court clerk for a period not to exceed the period in which the party’s brief is to be filed. Likewise if the Transcript has been transmitted to the Court of Appeals, arrangements would need to be made with the Appellate Clerk.

Question #9: What fund does the Auditor use for a bad check claim?

Answer #9: The council determines which fund has available funds to appropriate. Usually they designate the use of county general fund.

Question #10: We allow credit card payments for traffic fines. In the defendants copy of the credit receipt we have a sticker that states that by signing this receipt you acknowledge that payment won’t be processed in the case management system until we receive the funds. Is this good to have?

Answer #10: Yes.

Question #11: Do you have to have the Respondent/Defendants date of birth or SSN in order to let the Petitioner/Plaintiff file the Protective Order? Can they file one without it?

Answer #11: The requirement of a unique identifier is for placing the protective order in IDACS (State police Registry) or NCIC (FBI national registry). IDACS will not accept an order without one of the unique identifiers. However, a protective order may be issued without one of the unique identifiers, and law enforcement will be able to enforce the protective order within the county. Therefore the petitioner may file for a protective order without having one of the unique identifiers.

Question #12: What is the law on special judge case claims.

Answer #12: IC 34-35-1-4 provides guidance on compensation for special judges. A special judge would receive \$20 per day/ \$40 per day if out-of-county. They would be paid mileage at the state rate. A special judge that is a full time judge elsewhere in Indiana receives no compensation but would receive reimbursement for meals lodging and travel as approved by State Court Administration.

Question #13: If a clerk receives extra compensation for serving on the election board, should the county also contribute the appropriate percent of PERF on clerks behalf to PERF fund?

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QUESTIONS AND ANSWERS FROM COUNTY CLERKS ANNUAL CONFERENCE - (Continued)

- Answer #13:** Yes, if required by the county's PERF plan. This is one of the reasons these payments should go through payroll.
- Question #14:** We have a judge who orders parties to pay for mediation in their divorce case and wants it paid to the clerk. Is this authorized by statute?
- Answer #14:** We are not aware of a statute that allows for this cost to be a fee. It sounds as if this is a specific court order for this case. If it is a judgment, you may collect pursuant to the order as you do other judgments.
- Question #15:** Our judge will at times order an attorney to pay "sanctions". How do we collect these?
- Answer #15:** You would collect it as you do judgments specifically ordered by the court.
- Question #16:** Certified Mail Service Cost – Can we require the plaintiff to provide envelopes with adequate postage for certified mail, or is this cost to be borne by the county per statute?
- Answer #16:** IC 33-37-3-1 states "service of process" is included in court costs by certified mail. If this mailing is not "service of process" you may require postage be provided.
- Question #17:** Will County Budget Form 1 be available as a "word document" or is it available in that form now?
- Answer #17:** The Department of Local Government Finance offers an electronic version that you may request directly from them.
- Question #18:** Law Enforcement Claims: Does IC 33-37-4 include all law enforcement agency's claims can only be paid during the current year in which the fees are collected.
- Answer #18:** IC 5-2-8 requires funds be claimed by the law enforcement agency in the same fiscal year as collected for county law enforcement agencies only. City/Town and other local law enforcement agencies do not have this same requirement.
- Question #19:** Conflict of Interest – When you have personal knowledge or when another individual inquires about situations that appear to require a conflict of interest disclosure statement to be on file, and there isn't a conflict of interest on file, where can they turn? State Ethics Committee? SBOA? What sort of supporting fact is required?
- Answer #19:** Report to the governing board of the governmental unit that made the purchase or contract (Commissioners in a county) or State Board of Accounts. IC 35-44-1-3 contains details describing what is a conflict of interest and when disclosure will create an exception to the conflict of interest statute. Supporting evidence needed would depend on whether or not a court case is filed or other type of pursuit is undertaken to remedy the situation.
- Question #20:** Can you explain foreign judgments and what case type they should be filed under and the costs.
- Answer #20:** Instate judgments are given the CB case type and the filer is charged \$3. If that judgment is enforced through a proceeding supplemental, the same case is then given an MI case type and charged the regular filing fee at that time. Out of state judgments are given an MI case type regardless of whether the filer is simply recording the judgment or not. The full filing fee is charged at the time of filing. Therefore the judgments you have from Ohio and Michigan will be given MI case numbers and the full filing fee should be charged.

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QUESTIONS AND ANSWERS FROM COUNTY CLERKS ANNUAL CONFERENCE - (Continued)

Question #21: There is conflicting information regarding the deadline for a marriage official to return the duplicate marriage license to the clerk. On the State Form 27553, Record of Marriage, provided by the Indiana State Board of Health, it states the deadline is 30 days. In IC 31-11-11-8, it says they have 90 days.

Answer #21: IC 31-11-4-16 states: "(a) The individual who solemnizes a marriage shall do the following: (1) Complete the original and duplicate certificates described in section 15 of this chapter. (2) Give the original certificate to the individuals who married each other. (3) Not later than (30) days after the date of marriage, file the duplicate certificate and the license to marry with the clerk of the circuit court who issued the marriage license.

(b) The clerk of the circuit court shall record the duplicate certificate and license to marry as prescribed by the state department of health under section 15 of this chapter.

(c) If a duplicate certificate and marriage license are filed with a clerk of the circuit court who did not issue the marriage license, the clerk shall return the certificate and license to the clerk of the circuit court who issued the license.

Although, the form is to be filed within 30 days, IC 31-11-11-8 only makes it a Class C infraction after 90 days have passed.

QUESTIONS AND ANSWERS FROM COUNTY TREASURERS ANNUAL CONFERENCE

Question #1: Does a garnishment agreement with a state or county employee exempt them if the county has a tax sale?

Answer #1: IC 6-1.1-22-14 through 16 which allows for deductions from money due a governmental employee who is delinquent in property taxes is not mutually exclusive of IC 6-1.1-24 that allows for the sale of property of a person who is delinquent in property taxes.

Question #2: When we process NSF checks and the taxpayer comes in to re-pay on their taxes and it's after the due date, do we charge penalties? It was paid on time but the check was bad and now penalties have been applied. Our auditor wants to charge penalties and that's ok we just need to know what to do next.

Answer #2: IC 6-1.1-37-10 requires that taxes not paid timely have a penalty added. A check without sufficient funds to back it is not a payment. Therefore, our position is that penalty must be added.

Question #3: What is the process of bankruptcies for the treasurer to find out who has filed? I have been told by an attorney we need to find out who has filed and then if less than \$1000.00 we need to file a claim with the bankruptcy court? Where is this form and what is the process from front to end to following all steps?

Answer #3: Please work with the county attorney. If you have questions about forms contact either the northern or southern bankruptcy court depending on which district you are in. Both should have on-line information.

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QUESTIONS AND ANSWERS FROM COUNTY TREASURERS ANNUAL CONFERENCE (Continued)

- Question #4:** We have a storm water fee in our county. The county engineer and commissioners signed an ordinance for this \$60.00 per year (\$30.00 each installment). We were to mail out bills that a vendor was doing for us. On the day they were to be mailed out. The engineer took to the auditor 400 people that he said they need to put this fee on their bills somehow he had found them. So the auditor brought to me the list and said we had to run off new bills and mail with the \$60.00 storm water added. They continued to do this the whole taxing time. Is there a time frame or way we can put a deadline on him.
- Answer #4:** IC 8-1.5-7(c) in reference to such a fee allows for the charge on the semi-annual property tax statement. It does not have time frame for the charges to be submitted. We recommend you work with the engineer on timing of submission to avoid changes of bills once printed.
- Question #5:** Bad checks – If we receive a bad check on taxes and we add the taxes back by AA do we still notify the Prosecutor of the bad check?
- Answer #5:** Yes.
- Question #6:** What is penalty if CEDIT, CAGIT etc, is not distributed within ten days?
- Answer #6:** There is no stated penalty; however, the receiving unit may take action if they don't receive in timely manner.
- Question #7:** If your county does not have a bank that can provide lockbox service, can you use a bank outside your county for lockbox service?
- Answer #7:** IC 5-13-8-9 states that public funds shall be deposited in the designated depositories located in the respective territorial limits of the political subdivision except if there is no principle or branch located in the county or if no financial institution will accept public funds. Then the treasurer can go outside of the county. There is no provision that allows you to go outside of the county if the county has designated depositories that will accept deposits but does not provide lockbox service.
- Question #8:** I did not get demand notices done by July 31st. Am I just out of luck or was there an extension allowed for delayed billings? (We intend to do them next week)
- Answer #8:** There is no extension in IC 6-1.1-23-1 for the required demand notices that must be sent between Nov 11 and Aug1 of the subsequent year. You must be able to serve these at some point in that period of time even if you have a delayed billing. You do have an option to send additional demand notices between May 11 and Oct 31st.
- Question #9:** When checking on past due taxes and judgments before issuing a Mobile Home Transfer permit, companies have reissued titles and it is difficult to make sure all taxes are paid by names that we are given. We refer to locations or lot numbers to help confirm we have searched all possibilities. Now Mobile Home Park managers are claiming that the homes were moved to a different lot in their park. Are they allowed to do this without permits from the Treasurer? If not what recourse can be taken when we find they have moved them without permits?
- Answer #9:** IC 9-22-1.5 does appear to allow a mobile home park owner to transfer title after auction without permit. It does not discuss moving.

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QUESTIONS AND ANSWERS FROM COUNTY TREASURERS ANNUAL CONFERENCE (Continued)

Question #10: Can you certify personal property judgments if you had a deadline after July 1? If so what are the steps.

Answer #10: Yes, IC 6-1.1-23-1 requires you to serve demand notices after Nov 10th and prior to August 1st of the succeeding year. You may serve demands after May 10th and prior to Oct 31st each year in addition to the required demands. For these demands you may certify for judgment 60 days after the demand notice was served in accordance with IC 6-1.1-23-9.

Question #11: when taking bids for CD investments, do treasurers have to take the highest rate bid? Can the financial stability of the institution be taken into consideration on awarding the highest bid? If so what do you suggest in documentation to support the final decision?

Answer #11: IC 5-13-9.5 does not provide for consideration of financial stability in determining quotes for CDs. You may consider this in determining which depositories you solicit quotes from. However, the law requires solicitation from at least 3 depositories. Some of which must have been designated for deposits by your local board of finance. The number depends on how many depositories in the county are designated by the local board. See IC 5-13-9-5.

Question #12: Is there any money anywhere that can help a county elected official to attend the AIC day that the different offices hold their Association meetings? As the council's have cut travel budgets. Is there a fund in reassessment that the Treasurer can use for education or supplies for the Treasurer and if so how do we go about getting this money?

Answer #12: The treasurer as a part of the county administration does not have many specific funds that may be used to support the office or travel expenses. General purpose funds may be used if appropriated for that purpose, like county general or rainy day funds. Reassessment cannot be used for the treasurer's office.

Question #13: Our county has a drive-up drop box. Do we have to empty the drop box at midnight the night of tax collection deadlines, or can we empty it the first thing the next business day? For instance, the fall deadline is Nov 10th can we empty the box Nov 11th at 7:30 am or must we empty it either when we close on Nov 10th or at Midnight on Nov 10th?

Answer #13: You must have policies and procedures in place to apply penalties to all parcels that are not paid on time under IC 6-.1-37-10. Emptying the box at 7:30am the day after the due date will not be adequate to ensure properties taxes not paid timely receive penalty.

Question #14: Can an invoice dated 12/31 or prior be used to encumber money into the next budget year?

Answer #14: You should have a: contract, purchase order, grant; or (bond proceeds) in place prior to year end to encumber funds. An invoice is not a proper basis for encumbrance.

Question #15: Releasing of penalties - How can a county attorney representing the county and the city make the decision without a court order, that penalties must be released on a deeded parcel of land. The parcel has been removed from the tax sale twice because it is a dead parcel and was transferred to other parcels without the taxes being paid. The auditor asks treasurer about removing penalties and we say no because it does not fall under the IC codes for releasing penalties. So the auditor seeks advice from the county attorney and he tells her to definitely release those penalties. Does the county attorney have the authority to interpret the law a different way or override the law to collect the tax?

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Answer #15: Although I am not aware of any statutes waiving penalties other than IC 6-1.1-37-10.7 (for death on family), it is the county attorney's duty to provide legal guidance based on their interpretation of law. We ask that you get their legal opinion in writing if it is contrary to our audit position. I am not familiar with statutory guidance on "dead parcels", or any audit position we have taken on such parcels. We recommend you review the basis for the county attorney's opinion so you and other officials can determine the best way to proceed or correct postings for these parcels.