

THE COUNTY BULLETIN

And Uniform Compliance Guidelines

ISSUED BY STATE BOARD OF ACCOUNTS

Vol. No. 385

October 2012

REMINDER OF ORDER OF BUSINESS

October

- 8 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.
 - 24, 25, 26 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))
- 6 Election Day – Legal Holiday. (IC 1-1-9-1)
- 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))
- 12 Veterans' Day - Legal Holiday. (IC 1-1-9-1)
- 13 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)
- 20 Last day to report and make payment of State Income Tax withheld in October to Indiana Department of Revenue.
- 22 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.

RECORDING OF COPIES

IC 36-2-11 allows for the recording of a copy, but requires that the instrument be marked "copy".

Further, IC 36-2-11-16(e) and (f) state:

"(e) The recorder shall record a document presented for recording or a copy produced by a photographic process of the document presented for recording if:

(1) the document complies with other statutory recording requirements; and

(2) the document or copy will produce a clear and unobstructed copy.

(f) An instrument, document, or copy received and recorded by a county recorder is conclusively presumed to comply with this section. A recorded copy shall have the same effect as if the original document had been recorded."

In many instances, it is very difficult to distinguish between a copy and an original. After a copy of a document is photocopied, it is virtually impossible to tell whether an original or a copy was photocopied. For this reason, prior to recording the copy of the document, it should be clearly marked "Copy." If the person who presents the copy for recording does not want the word "Copy" written on the document, one way this could be handled is to write "Copy" on a self-stick removable note, place the self-stick removable note on the copy, photograph the copy, and then remove the self-stick removable note.

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SOIL AND WATER CONSERVATION DISTRICT EXPENSE

There seems to be some confusion over whether the county should pay the expenses of soil and water conservation districts. IC 14-32-4-18 provides that an employee of the district is considered a county employee and permits payment of salaries and fringe benefits of soil and water conservation district employees. However an employee of a district whose position is funded entirely from sources outside the county in which the employee works solely on the basis of the funding of the employee's position is not considered an employee of the county. Except as stated in IC 14-32-5-8, all other operating expenses are to be paid by the district.

IC 14-32-5-8 states, "The fiscal body of each county that contains a district in whole or in part may (our emphasis) appropriate money for the use of the district serving the county from which the appropriation is to be made."

County auditors are not to pay claims of any kind for soil and water conservation districts except payroll and fringe benefit claims (IC 14-32-4-18) and claims as per IC 14-32-5-8 provided in the appropriation by the county council.

MONEY FOUND ON DECEASED PERSONS

In regard to money or personnel property found with a deceased person, IC 36-2-14-11 states:

" (a) This section applies to money or other personal property:

(1) owned by a deceased person whose death is subject to a coroner's investigation; or

(2) found:

(A) on a body; or

(B) at the scene of death.

(b) If money or personal property is not claimed by a person entitled to them, the coroner shall do the following:

(1) Take possession of the property.

(2) Publish, in accordance with IC 5-3-1, a description of the deceased and the name of the deceased if known.

(3) Make a reasonable search to find a person who is entitled to the money or other personal property.

(c) If, after complying with subsection (b), the coroner does not know of a person entitled to the money, the coroner shall deliver the money to the county treasurer for deposit in the county general fund

(d) If, after complying with subsection (b), the coroner does not know of a person entitled to the personal property other than money that has an intrinsic value, the coroner shall deliver the personal property to the sheriff for sale at any auction that the sheriff conducts under law. The sheriff shall deposit the receipts from the auction of the personal property in the county general fund."

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RETAINAGE ON PUBLIC CONTRACTS IN EXCESS OF \$200,000 AND PERFORMANCE BOND

Pursuant to IC 36-1-12-14, it is required that when public works contracts are awarded by a county for certain public works or improvements and such contracts exceed \$200,000, such contracts shall include provisions for the retainage of portions of payments by the board (defined to mean the board or officer of a political subdivision or agency having the power to award contracts for public work) to contractors, by contractors to subcontractors, and for the payment of subcontractors. This statute applies to the construction, alteration, or repair of all buildings or other improvements the cost of which is paid from public funds or from special assessments imposed and levied on real estate, land and lots benefited thereby but shall not include highways, roads, streets, alleys, bridges and appurtenant structures situated on streets, alleys and dedicated highway right-of way.

At the discretion of the contractor, the retainage shall be held by the board or shall be placed in an escrow account with a bank, savings and loan institution, or the state as escrow agent. The escrow agent shall select by mutual agreement between the board and contractor or contractor and subcontractor under a written agreement among the bank or savings and loan institution and (1) the board and the contractor; or (2) the subcontractor and the contractor.

Where an escrow agent is selected, it is required that at the time any retainage is withheld the amount of the retainage shall be placed in an escrow account with the escrow agent, to be promptly invested by the escrow agent in its discretion. The escrowed principal and the income from the investments shall be held by the escrow agent until receipt of a notice releasing the funds in accordance with the terms of the law and the agreement.

When a bank or savings and loan institution is selected as escrow agent, the amount of the retainage withheld shall be paid by warrant to the escrow agent and, when paid, shall be treated in the same manner as any other payment on the contract, with the escrow agent being required to deposit, invest and otherwise account for the escrowed principal and interest, in accordance with the law and the terms of the agreement. The escrow account will not be carried on the records of the county.

Statute provides that the escrow agent shall be compensated for its service as the parties may agree in an amount comparable with fees being charged for the handling of escrow accounts of similar size and duration. The fee shall be paid from the escrowed income of the escrowed account.

The escrow agreement must contain the provisions that the escrow agent shall invest all principal in obligations selected by the escrow agent, that the escrow agent shall hold the principle and income until receipt of notice and follow the notices provision of release, and the statutory escrow agent fee provisions.

To determine the amount of retainage to be withheld the board shall:

1. Withhold no more than ten percent (10%) nor less than six percent (6%) of the dollar value of all work satisfactorily completed until the public work is fifty percent (50%) completed and nothing further after that; or
2. Withhold no more than five percent (5%) nor less than three percent (3%) of the dollar value of all work satisfactorily completed until the public work is substantially completed.

If upon substantial completion of the public work minor items remain uncompleted within sixty-one (61) days after the date of substantial completion, an amount equal to two hundred percent (200%) of the value of each item as determined by the architect-engineer shall be withheld until the item is completed.

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**RETAINAGE ON PUBLIC CONTRACTS IN EXCESS OF \$200,000 AND
PERFORMANCE BOND (Continued)**

If the contractor chooses to have the retainage held by the board, then the board is not required to pay interest on the amounts of retainage it holds. However, such amounts held by the board will be carried on the records of the county as an agency fund.

Required warranties begin not later than the date of substantial completion.

Subject to IC 36-1-12-11 and IC 36-1-12-12 and subject to the value of minor items being withheld as stated above, the board or escrow agent shall pay the contractor within 61 days after the date of substantial completion.

The contractor shall furnish the board with a performance bond equal to the contract price. If acceptable to the board, the performance bond may provide for incremental bonding in the form of multiple or chronological bonds that, when taken as a whole, equal the contract price.

The performance bond must specify that:

- (1) a modification, omission, or addition to the terms and conditions of the public work contract, plans, specifications, drawings, or profile;
- (2) a defect in the public work contract; or
- (3) a defect in the proceedings preliminary to the letting and awarding of the public work contract; does not discharge the surety.

The surety on the performance bond may not be released until one (1) year after the date of the board's final settlement with the contractor.

However, if the public work contract is less than \$250,000, the board may waive the performance bond requirement and accept from the contractor an irrevocable letter of credit. The letter of credit must be for an equivalent amount from an Indiana financial institution approved by the Department of Financial Institutions. Subsections (e) through (g) of IC 36-1-12-14 apply.

DEATH AND MORTGAGE RELEASE LISTS

To enable the county to administer the change in filing exemptions the following information is required to be furnished the county auditor:

1. IC 16-37-3-9 (c) states: "The local health officer shall, not later than January 31, April 30, July 31, and October 31 of the year, furnish to the county auditor the records of all deaths within the officer's jurisdiction that occurred during the previous three (3) months."
2. IC 36-2-11-24 states: "The county recorder shall, on or before the 20th day of each month, furnish the county auditor a list of the mortgage releases recorded during the prior month. The list shall set forth the full name of the mortgagor, the book and page numbers of the original mortgage, the amount being released, and the date of the release."

PAYMENT OF FUNDS DUE DECEASED PERSON IC 29-1-8

This office is periodically contacted regarding the correct method of making payment of money due an official, employee, or other person who has died. If an executor, administrator or personal representative has been designated by the court, payment should be made to such executor, administrator or personal representative.

IC 29-1-8-1 states in part:

“(a) Forty-five (45) days after the death of a decedent and upon being presented an affidavit that complies with subsection

(b), a person:

(1) indebted to the decedent; or

(2) having possession of personal property or an instrument evidencing a debt, an obligation, a stock, or a chose in action belonging to the decedent; shall make payment of the indebtedness or deliver the personal property or the instrument evidencing a debt, an obligation, a stock, or a chose in action to a person claiming to be entitled to payment or delivery of property of the decedent.

(b) The affidavit required by subsection (a) must be an affidavit made by or on behalf of the claimant and must state the following:

(1) That the value of the gross probate estate, wherever located (less liens and encumbrances), does not exceed fifty thousand dollars (\$50,000).

(2) That forty-five (45) days have elapsed since the death of the decedent.

(3) That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction.

(4) The name and address of each other person that is entitled to a share of the property and the part of the property to which each person is entitled.

(5) That the claimant has notified each person identified in the affidavit of the claimant's intention to present an affidavit under this section.

(6) That the claimant is entitled to payment or delivery of the property on behalf of each person identified in the affidavit.”

Following is a suggested format for an affidavit for transfer of assets without administration. Since this is a legal question and there are statutory changes over time, please discuss this article and the suggested affidavit with your legal counsel.

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PAYMENT OF FUNDS DUE DECEASED PERSON - (Continued)

The affidavit furnished should be similar to the following:

STATE OF INDIANA) SS:
COUNTY _____)

**AFFIDAVIT FOR TRANSFER OF ASSETS
WITHOUT ADMINISTRATION**

_____, being first duly sworn upon _____ oath deposes and says:

1. That _____ died on the _____ day of _____ 20____
(testate), (intestate) while domiciled in _____ County, Indiana.
2. That no application or petition for the appointment of a personal representative of his estate is pending or has been granted in any jurisdiction.
3. That forty- five (45) days have elapsed since the death of said decedent.
4. The value of the gross probate estate less liens and encumbrances thereon does not exceed fifty thousand dollars (\$50,000).
5. The name and address of each other person that is entitled to a share of the property and the part of the property to which each person is entitled is listed below.

NAME	ADDRESS	PART OF PROPERTY ENTITLED
_____	_____	_____
_____	_____	_____

6. The affiant has notified each person identified in the affidavit of the affiant's intention to present an affidavit
7. That this affiant is a (widow) (widower) (distributee) of said decedent and is entitled to receive without administration the following listed property from the person, firm or corporation listed opposite said property subject to the liens and encumbrances thereon.

KIND OF PROPERTY	WHERE LOCATED	VAULE	LIEN OR ENCUMBRANCES IF ANY	NAME AND ADDRESS OF PERSON, FIRM OR CORPORATION HOLDING PROPERTY OF DECEDENT
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

This affidavit is made for the purpose of inducing the above named holders of said decedent's property to turn said property over to this affiant as provided by law.

AFFIANT

ADDRESS

Subscribed and Sworn to before me this _____ day of _____ 20 _____

Notary Public*

County of Residence _____
My commission expires _____

LUCRATIVE OFFICES

We are frequently asked about lucrative or dual office holdings. These questions should be directed to your county attorney. On the Attorney General's website there is a guide that provides a four part analysis that may be used in determining whether or not holding a second public service position violates the law. The four questions are:

1. Are both positions lucrative offices within the meaning of Indiana Constitution Article II, Section 9?
2. Would holding both positions violate the constitutional doctrine of "separation of powers" under Indiana Constitution Article III, Section 1?
3. Are the positions incompatible and would holding both create a conflict of interest or a public policy concern?
4. Does a federal, state or local law or regulation prohibit the simultaneous holding of both offices?

The guide provides in depth information that addresses these four parts as well as providing other information such as attorney generals' opinions and case law that address the question of dual office holding for various positions. Effective July 1, 2012 various statutes were amended or added addressing whether certain positions were lucrative. This may be found under Public Law 135-2012.

SPREADSHEET SOFTWARE UTILIZATION TO GENERATE EXACT REPLICAS OF PRESCRIBED FORMS

The Indiana State Board of Accounts prescribes the forms to be utilized in accounting systems, but does not specify the source from which the prescribed forms must be obtained. With the current capabilities of spreadsheet software, the use of spreadsheet software may, in some instances, be an acceptable method of generating exact replicas of prescribed forms.

Spreadsheet may not be utilized to replace functionality that should be an integral function of a computerized accounting system or replace a controlled document for the entry of accounting information. Examples of this type of form include forms that are required to be either prenumbered by an outside printing supplier or numbered by the accounting system with sufficient controls to prevent unauthorized generation of the form or duplication of control numbers on the forms. These forms include receipts, checks, purchase orders and material receiving documents. In addition, spreadsheets should not be utilized to generate control documents such as ledgers, receipt registers, check registers, outstanding check list and similar reports. Under no circumstances is it acceptable to implement an electronic interface from spreadsheet software directly to the information files of an accounting system without being processed through the same edit and control features as are utilized to ensure the accuracy of information entered manually into the accounting system.

Exact replicas of prescribed forms generated by spreadsheet software may be utilized for forms incidental to the computerized accounting system. Examples of these forms include travel vouchers, attendance records, and fixed asset records.

If you have any questions on the utilization of spreadsheet software to replicate a specific prescribed form, please contact our Information Technology Services department at (317) 232-8617.

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GHOST EMPLOYMENT

In regard to ghost employment IC 35-44.1-1-3 states:

“(a) A public servant who knowingly or intentionally:

(1) hires an employee for the governmental entity that the public servant serves; and

(2) fails to assign to the employee any duties, or assigns to the employee any duties not related to the operation of the governmental entity; commits ghost employment, a Class D felony.

(b) A public servant who knowingly or intentionally assigns to an employee under the public servant's supervision any duties not related to the operation of the governmental entity that the public servant serves commits ghost employment, a Class D felony.

(c) A person employed by a governmental entity who, knowing that the person has not been assigned any duties to perform for the entity, accepts property from the entity commits ghost employment, a Class D felony.

(d) A person employed by a governmental entity who knowingly or intentionally accepts property from the entity for the performance of duties not related to the operation of the entity commits ghost employment, a Class D felony.

(e) Any person who accepts property from a governmental entity in violation of this section and any public servant who permits the payment of property in violation of this section are jointly and severally liable to the governmental entity for that property. The attorney general may bring a civil action to recover that property in the county where the governmental entity is located or the person or public servant resides.

(f) For the purposes of this section, an employee of a governmental entity who voluntarily performs services:

(1) that do not:

(A) promote religion;

(B) attempt to influence legislation or governmental policy; or

(C) attempt to influence elections to public office;

(2) for the benefit of:

(A) another governmental entity; or

(B) an organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code;

(3) with the approval of the employee's supervisor; and

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GHOST EMPLOYMENT (Continued)

(4) in compliance with a policy or regulation that:

(A) is in writing;

(B) is issued by the executive officer of the governmental entity; and

(C) contains a limitation on the total time during any calendar year that the employee may spend performing the services during normal hours of employment; is considered to be performing duties related to the operation of the governmental entity.”

The State Board of Accounts recommends that all governmental entities carefully maintain accurate prescribed or approved employment, service and other records for all persons employed so that documentation is available to substantiate all duties assigned and all amounts paid.

OFFICIALS' SIGNATURES ON CLAIMS, WARRANTS, AND OTHER OFFICIAL DOCUMENTS

The State Board of Accounts is often asked to approve the use of rubber stamps or other devices for affixing facsimile signatures of public officials on claims, warrants, and other official documents. The decision as to whether or not the number of documents to be signed justifies the use of a rubber stamp or other device for affixing his/her signature must be made by each official. Since each official is responsible for his/her signature, a rubber stamp or other signing device should be used only under the closest direction of the official and must be properly safeguarded when not in use.

SEATBELT VIOLATIONS

For each seatbelt violation under IC 9-19-10-2, IC 9-19-11-2 and IC 9-19-11-3.6, a person commits a Class D infraction. IC 34-28-5-4 allows a court to enter a judgment of up to twenty-five dollars (\$25) for each Class D infraction. All seatbelt violation cases would be considered moving traffic violations under IC 9-30-3-14 and would be required to be heard in a circuit, superior, county, city or town court or traffic violations bureau designated by these courts. Furthermore, IC 34-28-5-5 (c) states that all funds collected as judgments for violations of statutes defining infractions shall be deposited in the state general fund.

Additionally, in the Home Rule Law IC 36-1-3-8 states that a unit of government does not have the power to prescribe a penalty by local ordinance for conduct constituting an infraction.

QUESTIONS AND ANSWERS FROM COUNTY CLERKS ANNUAL CONFERENCE

Question #1: During a conversion process from GAVEL to ODESSY, JTAC disallowed a fee that had been assessed by the court during conversion these funds have been sitting in trust. Question is can these funds be invested or do they have to be submitted to the attorney general as unclaimed funds?

Answer #1: Unauthorized fees should not have been charged. However if they were charged per the court, the court should order where they should go or be refunded.

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QUESTIONS AND ANSWERS FROM COUNTY CLERKS ANNUAL CONFERENCE (Continued)

Question #2: Fraud – What about counterfeit funds? If you are given fake money and your deposit is then short what are the steps?

Answer #2: Bank will give you notice that they have a counterfeit bill. They will contact the proper federal authorities. You are left with a reconciling item between your books and your back and will need to go through your county's write off policy if there is one. At the very least you will be reporting this to the prosecutor within 90 days and need to document what you've done and will be submitting a claim to your county commissioners with the bank notification as supporting documentation so that you can make your account whole. You then need to think about appropriate controls.

Question #3: Nepotism – But if a judge is involved, they do not have to follow the nepotism ordinance. Could you look into this?

Answer #3: Our position is that a judge has been elected to a judicial district and not to a specific unit, therefore they are not subject to the direction of the "elected office" of the county. See our July 2012 County Bulletin for more on our position on nepotism

Question #4: Numerous counties have already been made aware that they will be having special elections next year. Wouldn't it be wise to have an election conferences geared towards such elections?

Answer #4: We will pass on to election division.

Question #5: Does the mortgage foreclosure filing fee go down \$50 as of January 1?

Answer #5: The mortgage foreclosure counseling and education fee of \$50 no longer exists after December 31, 2012; it is repealed.

Question #6: HEA 1005- As an elected officer who do I give the annual certification to?

Answer #6: To the Commissioners.

Question #7: Are the power point presentations or print information presented during this conference available in an electronic format? Where?

Answer #7: Yes, www.in.gov/sboa under meeting materials.

Question #8: When a vehicle has been sold under IC 9-22-1-21.5 or IC 9-22-6-2 and the surplus owed to the owner is turned over to the clerk (excess over the lien), is there a cause number?

Answer #8: If the sale is the application of a process allowed under Title 9 motor vehicles Article 22 which is abandoned salvages and scrape vehicle and the distribution of the proceeds of an abandoned or unclaimed vehicle with a lien as described under IC 9-22-1 or mechanics lien as described under UC 9-22-6. It appears that if these processes are applied the sale may occur without going through the court. IC 32-33-10, which also provides for the sale of a vehicle with a mechanics lien, requires going through the court but it specifically refers to IC 9-22-6 and states that it does not repeal, modify, or amend IC 9-22-6. IC 32-33-10 also requires that the clerk hold money owed to the owner. So you'll need to find out if the money is a result of a court order or not and then book it accordingly, either with a cause number or as a trust item without a cause number. Your vendor will help you to identify trust items without a cause number properly in your system if you don't know how.

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QUESTIONS AND ANSWERS FROM COUNTY CLERKS ANNUAL CONFERENCE (Continued)

Question #9: Is it permissible for a deputy clerk to perform a wedding ceremony on the weekend (or evening) and receive compensation for that service?

Answer #9: A deputy may perform duties as authorized by the clerk; however, no additional compensation can be paid to the deputy. Per IC 36-2-7-2, any tips, commissions, allowances or other remuneration would have to be deposited into county general fund. The compensation set for the deputy in the salary ordinance is in full for all services to the county.

QUESTIONS AND ANSWERS FROM COUNTY TREASURERS ANNUAL CONFERENCE

Question #1: Treasurers are now required to have training, is there going to be per diem for Treasurer's like for the Assessor's?

Answer #1: The training statute does not provide for additional per diems or impact travel compensation. You still will be reimbursed according to statute for those called meetings that provide for specific reimbursement, otherwise follow your county policy.

Question #2: What is the projected cost for Treasurers training?

Answer #2: This will be analyzed and compiled by your education committee. It will be on your training schedule when finalized.

Question #3: Are part-time employees eligible to go to conferences?

Answer #3: We do not exclude part-time employees from attending SBOA conferences. IC 5-11-14-1(f) states: "Whenever a conference is called by SBOA an elected official at the direction of the state examiner may require the attendance of each of the elected officials appointed and acting chief deputies or chief assistants and (A) if the number of deputies or assistants employed does not exceed three, one of the acting deputies or assistants or (B) exceeds three, two acting deputies or assistants.

Question #4: Can the Commissioners or Council do an ordinance to prohibit part-time employees to go to conferences?

Answer #4: Commissioners or Council cannot pass an ordinance that is contrary to statute. However, different state called meetings have different requirements. If a county policy is not contrary to statute, part-time employees may not be able to attend on work time.

Question #5: Can our County Commissioner's require us to share rooms at the annual conference? My understanding is we are required to attend and allowed to bring a deputy. Shouldn't they have to provide separate rooms?

Answer #5: Under State Board of Accounts statute for state called meetings there is provision for reimbursement at a single room rate. Policy cannot be contrary to what is allowed for under statute.

Question #6: We use a deposit express every day to deposit checks into our accounts. We then store the cancelled checks on a daily basis with a detailed summary report. My question is, should we be keeping these checks? Or should we shred them? We can get photo copies of the checks if needed. I'm concerned about the security of the checks.

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QUESTIONS AND ANSWERS FROM COUNTY TREASURERS ANNUAL CONFERENCE (Continued)

Answer #6: This is a question for Public Records

Question #7: Tax Sale – If an installment plan is signed July 1, 2012 and a payment is missed in August, is the property eligible for the 2012 tax sale without any notice on legal advertising? Re: “immediately eligible for tax sale.”

Answer #7: If this refers to IC 6-1.1-24-1.2 where the county auditors may remove the real property from the certified list and the taxpayer fails to make a payment as per the agreement, IC 6-1.1-24-1.2(e)(2) does say the county auditor shall immediately place the real property on the list of real property eligible for sale at tax sale. But the other provisions to enable a property to be on a tax sale must still be followed.

Question #8: Who is responsible for adding the Tax Sale costs? The Auditor or the Treasurer?

Answer #8: The Auditor gets the certified list and starts accumulating costs. Unpaid costs are entered into the tax duplicate by the Auditor.

Question #10: What would constitute a reason for the Treasurer not to enter into an agreement for monthly payments for delinquent taxes?

Answer #10: Response per DLGF, The statute does not provide guidance on this issue. The “reasons” will vary by situation (i.e., long history of delinquencies, unlikely to make the payments due to extreme financial distress, etc....keep in mind that the statute does not articulate any reasons and the examples are illustrative only and are not to be taken as authoritative), but that is not the real issue. The focus should be on setting a standard for your office with respect to entering into such agreements. You should work with your county attorney to develop guidelines for your decision-making so that you avoid being seen as arbitrary and capricious. Those standards should be used to judge each request to enter into a payment agreement.

Question #11: Tax Sale \$25 Rule – Our manatron software is now programmed to NOT certify any parcels which are delinquent \$25.00 or less on or before the previsions Spring with their latest software release. Is this correct? We certified on an older version of the software that did not have this rule loaded. Should these parcels be removed from the certified list? Manatron has asked us to re-certify, should we? Can we?

Answer #11: See Answer 13

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QUESTIONS AND ANSWERS FROM COUNTY TREASURERS ANNUAL CONFERENCE (Continued)

Question #12: IC 6-1.1-24-1 – If the delinquent total spring tax from the prior year is under \$25.00. Can the property be listed for Tax Sale or is it to be removed because it is under \$25.00? (It may be 4 years unpaid tax till it reaches \$25.00)

Answer #12: See Answer 13

Question #13: If a delinquent taxpayer is only \$25 or less behind for the previous spring (or before) are they not to be included in the tax sale? Are only those over \$25 delinquent for the previous spring or before eligible for the sale?

Answer #13: Our position in regard to the county treasurer certification to the county auditor of the real property list is that IC 6-1.1-24-1(a)(1) is to be considered as a whole and it states: “ In the case of real property, other than real property described in IC 6-1.1-24-1(2), any property taxes or special assessments certified to the county auditor for collection by the county treasurer from the prior year’s spring installment or before are delinquent as determined under IC 6-1.1-37-10 and (underline is State Board of Accounts) the delinquent property tax or special assessments due exceed \$25. There is no reference in statute to penalties and interest. This law was effective July 1, 2012, so any certifications made prior to this date would follow the statute in place at that time.

Question #14: Why do many counties not enforce the post mark statute for timely mail? For example, a Pitney Bowes metered letter dates May 10th but received on May 13th should be considered late with a penalty added. Why is this often ignored by Treasurers?

Answer #14: Many postmarks are only cancelling postage and do not have dates. Treasurers are responsible for having procedures to collect taxes and add penalties in compliance with laws.

Question #15: Payments processed through lockbox, are we required to inform taxpayers how to obtain a receipt? Currently, their cancelled check is their receipt. The DLGF approved my statements and it states your cancelled check is your receipt if mailed.

Answer #15: Regardless of DLGF approval of the form of your tax statement under IC 6-1.1-22-8.1, IC 6-1.1-22-12 states a taxpayer is entitled to a receipt upon request.

Question #16: On a financial program should total monies ever be given a fund number?

Answer #16: No, not ever. Total monies are monies already recorded in the funds on the auditor’s ledger.

Question #17: Can commissioners be the ones to have a say about who is hired or fired in an elected officials office? Not establishing the process, but the actual who, as long as in keeping with the nepotism policy?

Answer #17: We don’t know of a statutory prohibition against this.

Question #18: Our building inspector asked me if we can put a lien on the real estate to recover the cost of the county tearing down a building on this property. Can we charge these against their property tax?

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QUESTIONS AND ANSWERS FROM COUNTY TREASURERS ANNUAL CONFERENCE (Continued)

- Answer #18:** Demolition is usually done pursuant to the unsafe building law, IC 36-7-9. There are public hearings, notices and sometimes court actions required. If the court is not involved, there is a provision under IC 36-7-9-13.5, whereby an enforcement agency that performs the work or contracts for the work that does not receive payment within 30 days after the notice of costs is sent to all necessary parties may certify the amount to the county auditor for collection as a special assessment.
- Question #19:** Our County charges \$175.00 to every property in the tax sale. This includes a \$150.00 charge for our county lawyers to do a title search and a \$25.00 fee for mailing and other costs of advertising, etc. If the property taxes are paid before any of these expenses are incurred, can we still charge them for these items?
- Answer #19:** Because of the language in IC 6-1.1-24-2 requiring these amounts incurred prior to the sale date having to be in the tax sale notice; counties add these costs upon certification of the list. We do not take exception during audit to this practice.
- Question #20:** If a property has a house and a mobile home on the same parcel and the parcel is sold, will the Treasurer's office need a permit to transfer on the Mobile Home for the new owner?
- Answer #20:** Our audit position is no, because the sale is pursuant to court order and it guarantees clear title. IC 6-1.1-7-1.4 requires the owner of a mobile home who sells to another person to provide the permit. The County is not the owner. A purchaser who obtains title or desires title might seek a permit to take to BMV.
- Question #21:** Can the ineligible homesteads not be put on taxes, instead money paid to Auditor's office and quietused into the funds?
- Answer #21:** IC 6-1.1-36-17 requires the auditor who determines that a parcel was not eligible for a standard deduction/homestead to notify the county treasurer. The auditor shall issue a notice of taxes, interest and penalties due to the owner and include a statement that the payment is to be made payable to the county auditor in full within 30 days. Only if payment or a portion of the payment due is not paid within the 30 days does the county auditor have the authority to add the amount to the tax rolls and collect as property taxes.
- Question #22:** Is a person barred from Tax Sale if they owe taxes in other counties?
- Answer #22:** IC 6-1.1-24-5.3(a)(5) states: "A person who, in the county in which a sale is held, owes: delinquent taxes, special assessments, penalties, interest or costs directly attributable to a prior tax sale; on a real property listed for sale under IC 6-1.1-24-1 may not purchase property at the sale or certificates sold by the county commissioners under IC 6-1.1-24-6.1."