

THE COUNTY BULLETIN

And Uniform Compliance Guidelines

ISSUED BY STATE BOARD OF ACCOUNTS

Vol. No. 396

July 2015

REMINDER OF ORDER OF BUSINESS

July

June 30, 1 & 2 Clerk of the Circuit Court's Annual Conference

4 Legal Holiday - Independence Day [IC 1-1-9-1]

13 Distribute congressional interest to school corporations - second Monday. [IC 20-42-2-7]

20 Last day to report and make payment of balance of State and County Income Tax withheld in the month of June to Indiana Department of Revenue.

31 Last day to file quarterly unemployment compensation reports with Indiana Department of Workforce Development.

Last day for county treasurer to mail demand notices to delinquent personal property taxpayers. [IC 6-1.1-23-1]

August

5-7 County Treasurer's Annual Conference – Indianapolis

20 Last day to report and make payment of State and County Income Tax withheld in the month of July to Indiana Department of Revenue.

September

7 Legal Holiday - Labor Day. [IC 1-1-9-1]

20 Last day to report and make payment of State and County Income Tax withheld in the month of August to Indiana Department of Revenue.

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CHILD RESTRAINT SYSTEM PENALTIES

All Class D infraction collections for violations of the child restraint laws under IC 9-19-11 are to be accounted for separately as child restraint system fees. Such fees are to be remitted by the clerk to the county auditor on a monthly basis.

DISASTER RELIEF FUNDS – ACCOUNTING AND BUDGETING

Based upon language contained in IC 10-14-3-17(j)(5) which states that a political subdivision may waive procedures and formalities otherwise required by law pertaining to the appropriation and expenditure of public funds where a national disaster or security emergency had been declared, the following procedures should be followed when disasters relief funds are received.

Money received or expected to be received from the Federal Emergency Management Agency (FEMA), the State Emergency Management Agency, or the State Lottery Commission for tornado, flood, ice storm, or other types of declared disasters should be accounted for in the following manner:

1. If the money is to be used to reimburse funds for expenditures already incurred and paid and the conditions of IC 10-14-3-12 have been met, the amount received may be added back to the appropriation balances from which the expenditures have been previously made.
2. If the money is to be used for future expenditures, a separate fund should be set up entitled "Disaster Relief Fund." Such fund would not require appropriation or additional appropriation prior to spending the money in the fund.

It is recommended that all related expenditures records (Claims, minutes, correspondence, contracts, damage survey report, etc) be maintained in separate file for future audits required by State and Federal agencies.

CIVIL AND SMALL CLAIM SERVICE CHARGES

There has been a number of questions regarding these service charges. The biggest question has been regarding garnishee/defendants. The new fee laws say when a "defendant" is added, you change the \$10 fee. The State Board of Accounts cannot give a legal opinion on the definition of defendant.

We would recommend you talk to your judges and ask them whether a garnishee/defendant is a defendant under the fee law. Get the judge to put in writing their interpretation and keep this for audit purposes. That way we will know why you are or are not collecting the fee on garnishee/defendants. In the meantime, we will pursue an Attorney General opinion on this issue.

CONFLICT OF INTEREST SUBMISSION

The conflict of interest forms may now be uploaded on the Gateway website, <https://gateway.ifionline.org/>. You will find the upload link on the right hand side of the Gateway homepage directly under the local officials' login. You do not need a user id or password to upload the conflict of interest form onto Gateway. On the Report Builder page of the website a reporting tool has been added under Conflict of Interest Disclosure. The public will be able to view the Conflict of Interest forms that have been uploaded. The link to the Gateway website is also available on the State Board of Accounts web page at www.in.gov/sboa/

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CORRECTION TO COUNTY RECORDERS QUESTION

We are providing the following correction to question #122 in the October 2014 bulletin for county recorders:

Question 122: Do we have to do film backups if documents are on computer with backup?

Original Answer 122: A backup is necessary but there are no additional requirements for film.

Correct Answer 122: If an item has long-term retention, and it is being converted to digital from paper or only exists in digital, Indianan Commission on Public Records (ICRR) recommends a microfilm/microfiche copy be made to assure the preservation of the materials. Over the long term ICPR is working to develop an electronic records repository that will have appropriate redundancy and be able to adequately and properly store electronic copies.

CONTRACTING

We have received questions in the past regarding who has the legal authority to enter into contracts for the county. Our audit position is this; in general, the county executive –which is the Board of Commissioners – has the authority to contract on behalf of the county. We would not take audit exception if a county officer enters into a contract when statute specifically allows the officer to contract. An example of this would be for the County Sheriff. The Sheriff is charged with the care of prisoners confined to the county jail and implicit in that charge is the authority to enter into contracts to carry out that function. In addition, we would not take audit exception if the particular officer has non-appropriated funds that do not require council to appropriate the funds to fulfill the terms of the contract. An example of this would be the Recorders Perpetuation Fund. The County Recorder has the authority to disburse from the Recorders Perpetuation Funds without appropriation by the County Council. If a contract is to be paid entirely from the Recorder's Perpetuation funds, we would not take audit exception if the Recorder would enter into a contract for services.

COUNTY DRUG FREE COMMUNITY FUND

In 1990, per IC 5-2-11 a county drug free community fund was established in each county to promote comprehensive local alcohol and drug abuse prevention initiatives by supplementing local funding for treatment, education and criminal justice efforts. The fund consists of fees collected by the Clerk of the Circuit Court: under IC 33-37-7-2(c) and IC 33-37-7-8(e). [IC 5-2-11-2] Specifically:

1. Seventy-five percent (75%) of the Drug Abuse, Prosecution, Interdiction, and Correction Fee under IC 33-7-4-1(b)(5);
2. Seventy-five percent (75%) of the Alcohol and Drug Counter-Measures Fees under IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4) and IC 33-37-4-3(b)(5). [IC 33-37-7-2(c)]

These fees will be remitted monthly by the Clerk of the Circuit Court to the County Auditor on their Monthly Report of Collections and receipted to the "Drug Free Community Fund."

The remaining twenty-five percent (25%) of these fees are to be receipted by the Clerk of the Circuit Court to the "State User Fee Fund" and semiannually distributed to the Auditor of State.

The County Auditor shall administer the Drug Free Community Fund which requires local appropriation. The fund is non-reverting.

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COUNTY DRUG FREE COMMUNITY FUND (Continued)

The County Council shall annually appropriate from the fund amounts allocated by the Board of County Commissioners for the use of persons, organizations, agencies and political subdivisions to carry out recommended actions contained in a comprehensive drug free communities plan submitted by the Local Coordinating Council, established by IC 5-2-11-1.6 and approved by the Commission for a Drug Free Indiana established under IC 5-2-6-16.

The Board of County Commissioners shall allocate the money, based on the recommendation of the Local Coordinating Council and in accordance with the approved plan, as follows:

1. At least twenty-five percent (25%) of the money is to go to persons, agencies, organizations, and political subdivisions providing prevention and education services in the County, and
2. At least twenty-five percent (25%) of the money is to go to persons, agencies, organizations, and political subdivisions providing intervention and treatment services in the County, and
3. At least twenty-five percent (25%) to persons, agencies, organizations, and political subdivisions providing criminal justice services and activities in the County, and
4. The remaining twenty-five percent (25%) in the fund to be allocated by the county fiscal body to persons, organizations, agencies, and political subdivisions to provide services and activities under subdivisions (1) through (3) based on the comprehensive drug free communities plan.

Through the plan the Local Coordinating Council determines the amount of funds the County Council should appropriate to implement the objectives of the plan. If the plan is not approved by the Commission for a Drug Free Indiana the County Council may not appropriate the funds even at the request of the local council.

The fund may not be used to replace other funding for alcohol and drug abuse services provided to the county.

It will be up to the Board of County Commissioners, based on the approved comprehensive plan created by the LLC, to decide what persons, organizations, agencies, and political subdivisions get this money.

As always the recipients of these funds should enter into a contractual agreement with the county commissioners stating:

1. They will use the funds to provide services and activities contained in the plan;
2. The recipient will file periodic financial reports of the services and activities provided; and
3. They will be subject to an audit by the State Board of Accounts.

Additional Clarification

The Commission for a Drug Free Indiana (Commission) approves and appoints the local coordinating council (LCC) which is a countywide citizen body. The purpose of the LCC is to plan, monitor, and evaluate comprehensive local alcohol and drug abuse plans. The LCC works in an advisory capacity to the County Commissioners for the County Drug Free Community funds and develops the comprehensive plan that must be approved by the County Commissioners and ultimately by the Commission.

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COUNTY DRUG FREE COMMUNITY FUND (Continued)

The County Council will approve appropriations for the County Drug Free Community Fund (fund 1148) and the auditor will administer the funds. Disbursements from the fund must be in compliance with the Comprehensive Plan approved by the Commission. The Indiana Criminal Justice Institute will notify the county auditor when the plan has been approved and provide documentation of the approved plan's budget. The Auditor will administer the Drug Free Community fund similar to a grant fund although the funding comes from the collection of local fees and not a state grant. The auditor should notify the LCC of the fund balance and any amendments to the original comprehensive plan would have to be approved by the Commission.

The administration costs of the LCC that are approved under the Comprehensive plan will be paid through the county's claim processing. The county should not turn over any funds from the Drug Free Community fund to the LCC for the LCC to administer. Any payments for equipment or supplies will also be paid through the county's claims process.

Grant amounts awarded to other entities that will be providing services under the approved plan will be paid by claim, based on the comprehensive plan. The LCC can provide the grant agreement between the county and the other entity, but the Commissioners must approve the agreement. The LCC will monitor the grant activity for the county. The Commissioners should formalize the arrangement between the County and the LCC for implementation of the Drug Free Community plan with a written agreement.

Please contact Sonya Carrico with the Indiana Criminal Justice Institute which supports the Commission for a Drug Free Indiana if you have any questions about this program. Her email is scarrico@cji.in.gov.

QUESTIONS AND ANSWERS FROM COUNTY RECORDERS CONFERENCE

Question #1: If a county recorder receives money from the Attorney General Unclaimed on behalf of the office, what account should that be applied to? County General?

Answer #1: Once researched to try to determine purpose, if the purpose cannot be determined then it goes to general fund.

Question #2: Does the recorder's bond need to be recorded in office system before being filed with clerk?.

Answer #2: No. You'll want a copy for your own personal records but statute only requires official filing with the clerk and now a copy to go to the county auditor as well.

Question #3: According to the new law effective last July, the county auditor is now charged with receipting in the recording fees for the tax deeds. After much discussion and research last year the recorders were told by SBOA that the checks could not be made out to the recorder and receipted into the recorders' bank accounts even if the auditor collected the check. So, after all the attempts to keep the auditor from receipting in recorder fees and SBOA telling the recorders no, our auditor tells the taxpayer to write the transfer check to auditor and the recording fee to treasurer so they don't have to bother with receipting the money to the auditor then quietusing in. What's the difference? They are doing the same thing we suggested. Why is it o.k. to write our fee check to treasurer instead of recorder?

Answer #3: Statute requires that the auditor collect these fees. The auditor would need to following statute in regard to collecting these fees and good internal controls. This would require the auditor to provide a receipt, record properly and deposit as the auditor would with any other fees that the auditor has a duty to collect

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QUESTIONS AND ANSWERS FROM COUNTY RECORDERS CONFERENCE (Continued)

Question #4: New forms from BMV for affidavit of Transfer to Real Estate have a SSN on them. Do we go ahead and accept them and redact or reject it.

Answer #4: You should speak with both the Public Access Counselor and your BMV contact person to determine the proper compliance steps you should take in recording this.

Question #5: If I have a very general record request that would require quite a bit of research to provide, am I required to do the research or do I just need to make the records available to the public?

Answer #5: A request for inspection or copying must identify with reasonable particularity the record being requested. If you have questions on how to properly define this you should contact the Public Access Counselor. See also Chapter 11 page 3 of the Recorders Manual

Question #6: Should I record a document that I know to be fraudulently signed or improperly prepared?

Answer #6: Chapter 8 page 7 of the Recorders manual reads: "The county recorder does not testify as to the validity of any instrument for recording. A recorder should not refuse to accept instruments even though an element required for example a notary is not shown on the document." Only when a statute specifically addresses the recorder, such as IC 36-2-11-15 where it states the recorder may receive for recording only if certain criteria are met is the recorder empowered by statute to deny. If you fail to record there could be liability issues when a record is time sensitive or the order of recording is important.

Question #7: Please go over fee for recording oversize pages. If the oversize page is not the first page how much do you charge?

Answer #7: IC 36-2-7-10 (b) (2) states: "The county recorder shall charge the following: (2) Fifteen dollars (415) for the first page and five dollars (\$5) for each additional page of any document the recorder records, if the pages are larger than eight and one-half (8 ½) inches by fourteen (14) inches." We understand that some are charging the \$15 only if it is the actual first page of a set of documents and some if it occurs at any time within a set of paper. The statute does not define first page and so we won't take exception to either way as long as it is consistently applied.

Question #8: Should I be charging a recording fee to municipalities?

Answer #8: Indiana code 36-2-7-10 addresses fees to be charged by the Recorder. Section (g) of this chapter addresses the documents the Recorder should not charge for as follows:

- (g) The county recorder may not tax or collect any fee for:
 - (1) recording an official bond of a public officer, a deputy, an appointee, or an employee; or
 - (2) performing any service under any of the following:

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QUESTIONS AND ANSWERS FROM COUNTY RECORDERS CONFERENCE (Continued)

Answer #8: (Continued)

- (A) IC 6-1.1-22-2(c).
- (B) IC 8-23-7.
- (C) IC 8-23-23.
- (D) IC 10-17-2-3.
- (E) IC 10-17-3-2.
- (F) IC 12-14-13.
- (G) IC 12-14-16.

Based on this chapter the only filing by a municipality that would be free would be the filing of the Official's Bonds.

Question #9: What process does the county need to go through to get her forms approved when she switches to CSI?

Answer #9: Chapter 5 of the Recorder's manual explains the process for form approvals. It does state that if the vendor has been approved for other counties then you don't have to go through the formal form approval process. Your unit does need to pass a resolution and submit that resolution and letter to the SBOA. The letter requires some information on when and what county the vendor's forms were first approved. There is a sample letter included in the attachment as well as all of the guidelines.

See also the April 2014 County Bulletin (Volume 392) pages 9-11, which outline the current process for the Approval of Accounting Forms and Systems.

Question #10: Please explain what types of expenses we can use the Enhanced Access Fund for?

Answer #10: Indiana Code 5-14-3-8.3(b) states: "This fund is a dedicated fund with the following purposes: (1) The replacement, improvement, and expansion of capital expenditures. (2) The reimbursement of operating expenses incurred in providing enhanced access to public information."

Question #11: Please explain 36-2-7-10.2(b) (fund only if). Need guidance.

Answer #11: The 'only if' means that any payments of recorder's office expenses from the Recorders Perpetuation fund are allowed if both parts (1) regarding the county recorder's sworn statement and (2) regarding ordinance adopted by the county fiscal body listed under subsection (b) are met. We would take audit exception if operating expenses were paid from the perpetuation fund without both statutory conditions being met.

Question #12: Besides under Bulk Documents where in Indiana Code does it state recorded documents are not for resale?

Answer #12: We can find no other reference to recorded documents being resold other than Indiana Code 36-2-7-110.1 Sale of documents in bulk form to bulk users.

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QUESTIONS AND ANSWERS FROM COUNTY RECORDERS CONFERENCE (Continued)

Question #13: Auditor office was sent a check for \$19.00 for their fees but check was made out to Recorder – should Recorder sign (endorse) and turn check over to Auditor without being processed through our receipts system.

Answer #13: Assuming the check was for Auditor fees; then it would be appropriate to endorse the check over to the county to be deposited by the Treasurer into the county funds and receipted in by the Auditor. It would not be necessary or appropriate to process the check as a Recorder collection unless it was for Recorder fees. Note: it is possible that the treasurer could deposit the check into the county funds even if the recorder did not endorse the check.

Question #14: We have heard at this conference about GAAP. I have never heard this before. What is this?

Answer #14: GAAP stands for Generally Accepted Accounting Principles. This is a common set of accounting standards and procedures that entities use to compile financial statements that provides a consistent presentation for all financial statements prepared under GAAP. For states and local governments GAAP is determined by the Governmental Accounting Standards Board (GASB). The annual financial report (AFR) that counties file on the Gateway system is prepared on cash basis regulatory report utilizing fund accounting. This is not GAAP.

GAAP usually requires the use of accrual accounting with captures the financial aspects of each financial transaction in the accounting period in which the event occurs regardless of when the cash is received. This creates additional financial accounts such as an accounts payable or an accounts receivable. GAAP financial statements will include all payables, receivables, capital assets, debt and other liabilities on the financial statements and in the notes to the financial statements.