

CITIES AND TOWNS BULLETIN

AND UNIFORM COMPLIANCE GUIDELINES
ISSUED BY STATE BOARD OF ACCOUNTS

March 2012

JUNE TRAINING SCHOOL

This year's June Training School will be held in Indianapolis as part of the Indiana League of Municipal Clerks and Treasurers' Annual Conference during the week of June 24 through June 28, 2012.

The Conference and School will be held at the Indianapolis Hyatt Regency, One South Capital Avenue, in downtown Indianapolis.

The State Board of Accounts will be conducting two (2) days of training (June 26 and 27) at the Conference which will be State-called meeting days.

Please mark these dates on your calendar. An explanatory letter along with a tentative agenda will be sent out prior to the meeting.

ORDINANCE VIOLATIONS BUREAU

Certain ordinances may be enforced by a city or town without proceeding in court through:

1. an admission of violation before the violations clerk of an ordinance violations bureau under IC 33-36; or
2. administrative enforcement under IC 36-1-6-9.

An ordinance defining a moving traffic violation may not be enforced under IC 33-36 and must be enforced in accordance with IC 34-28-5 which requires such cases to be heard in any circuit, superior, county, city, or town court or traffic violations bureau designated by these courts (IC 36-1-6-3).

OATHS OF OFFICE – COPIES – WHERE TO DEPOSIT

IC 5-4-1-4 requires all officers of a political subdivision who are required to take an oath of office under IC 5-4-1-1 to deposit such oath with the clerk of the circuit court of the county containing the greatest percentage of the population of the political subdivision. IC 5-1-1-1.2 requires that such deposit occur not later than thirty (30) days after the beginning of the term of office.

TRAFFIC VIOLATIONS BUREAU

Any court may establish a traffic violations bureau and appoint a violations clerk who shall serve under the direction and control of the court.

The violations clerk or deputy violations clerk shall:

1. accept:
 - A. written appearances;
 - B. waivers of trial;
 - C. admissions of violations;
 - D. declarations of nolo contendere for moving traffic violations;
 - E. payments of judgments (including costs) in traffic violations cases; and
 - F. deferral agreements made under IC 34-28-5-1(f) and deferral program fees prescribed under IC 33-37-4-2(e).
2. issue receipts and account for any judgments (including costs) collected; and
3. pay the judgments (including costs) collected to the appropriate unit of government as provided by law.

The court shall:

1. designate the traffic violations within the authority of the violations clerk, but these violations may not include misdemeanors or felonies;
2. establish schedules, within limits prescribed by law, of the judgments to be imposed for first violations, designating each violation specifically;
3. order that the schedule of judgments be prominently posted in the place where the fines are paid;
4. establish a procedure under which any violations clerk or deputy violations clerk shall accept, receipt, and account for all money tendered for designated traffic violations; and
5. dismiss deferred actions if a dismissal request is made under IC 34-28-5-1(f).

Any person charged with a traffic violation that is within the authority of the violations clerk may mail or deliver:

1. the amount of the judgment (including costs) indicated on the ticket; and
2. a signed:
 - A. admission of the violation; or
 - B. pleading of nolo contendere, if the action is for a moving traffic violation (IC 34-28-5-11).

Before accepting a pleading admitting to a violation or entering a declaration of nolo contendere to a violation, the violations clerk or the officer writing the ticket shall inform the person that:

1. the person's signature to:
 - A. an admission of the violation; or
 - B. a pleading of nolo contendere will have the same effect as a judgment of a court; and
2. the record of judgment will be sent to the Commissioner of Motor Vehicles of Indiana or the state where the person received a license to drive. (IC 34-28-5-12)

WORKER'S COMPENSATION INSURANCE – CITY POLICE OFFICERS AND FIREFIGHTERS

The provisions of the worker's compensation laws (IC 22-3-2 through 22-3-6) do not apply to employees of municipal corporations in Indiana who are members of:

1. the fire department or police department of any such municipality; and
2. a firefighters' pension fund or police officers' pension fund.

However, if the common council elects to purchase and procure worker's compensation insurance to insure said employees with respect to medical benefits under IC 22-3-2 through IC 22-3-6, the medical provisions of IC 22-3-2 through IC 22-3-6 apply to members of the fire department or police department of any such municipal corporation who are also members of a firefighters' pension fund or a police officers' pension fund.

When any municipal corporation purchases or procures worker's compensation insurance covering members of the fire department or police department who are also members of a firefighters' pension fund or a police officers' pension fund, and pays the premium or premiums for such insurance, the payment of such premiums is a legal and allowable expenditure of funds of any municipal corporation.

Where the common council has procured worker's compensation insurance, any member of such fire department or police department employed in the city carrying such worker's compensation insurance is limited to recovery of medical and surgical care, medicines, laboratory, curative and palliative agents and means, x-ray, diagnostic and therapeutic services to the extent that such services are provided for in the worker's compensation policy procured by such city, and shall not also recover in addition to that policy for such same benefits provided in IC 36-8-4. (IC 36-8-4-5 states that the cost of care for injury or illness shall be paid from the general fund of the City.)

If the medical benefits provided under a worker's compensation policy procured by the common council terminate for any reason before the police officer or firefighter is fully recovered, the common council shall provide medical benefits that are necessary until the police officer or firefighter is no longer in need of medical care.

OPERATION PULLOVER, DUI TASK FORCE, AND BIG CITY/BIG COUNTY GRANTS

Several city police departments and town marshals participate in the Operation Pullover Grant Program and other similar programs which are administered by the Division of Traffic Safety, Indiana Criminal Justice Institute. These programs provide for additional compensation to police department personnel for performing highway patrol duties which are in addition to their regular patrol duties.

Since in most cases the services are provided during off-duty hours, it is paid to law enforcement personnel in addition to their regular compensation which was established in the salary ordinance. The city or town council should provide in the salary ordinance authorization of the additional compensation and also should provide additional appropriations for program expenses which previously were not budgeted before the fiscal officer can make payments. Additional appropriations must be obtained since funds are provided on a reimbursement basis with prior expenditure of local funds required.

If there are questions concerning the funding and allowable expenditure purposes for these grants, it is suggested you call the Division of Traffic Safety, Indiana Criminal Justice Institute, at (317) 232-1295.

APPROPRIATION OF STATE GRANTS

State grant monies that are not required to be paid back and that are itemized and ear-marked for particular expenditures do not necessarily need to be appropriated by the municipality in order to make such expenditures. This determination is under the assumption that the municipality receives the money up front and it is receipted into a separate fund and is not a reimbursement to a previously established fund that requires an appropriation.

Neither the State Board of Accounts nor the Department of Local Government Finance would take exception to spending such monies without further appropriation.

APPROPRIATIONS **TRANSFER OF APPROPRIATIONS WITHIN BUDGET**

The following provisions of IC 6-1.1-18-6 set out the manner in which appropriations may be transferred by certain officials of a political subdivision:

“(a) The proper officers of a political subdivision may transfer money from one major budget classification to another within a department or office if: (1) they determine that the transfer is necessary; (2) the transfer does not require the expenditure of more money than the total amount set out in the budget as finally determined under this article; and (3) the transfer is made at a regular public meeting and by proper ordinance or resolution.

(b) A transfer may be made under this section without notice and without the approval of the Department of Local Government Finance.”

PROMOTION OF CITY AND TOWN BUSINESS

IC 36-7-2-7 allows cities and towns to promote economic development and tourism. Such statute replaced a prior law which authorized cities and towns to budget and appropriate funds from the general fund to pay the expense of, or to reimburse city or town officials as the case may be, for expenses incurred in promoting the best interest of the city or town. Accordingly, a Home Rule ordinance needs to be adopted in accordance with IC 36-1-3 in order to enable a city or town to pay for such expenses. Additionally, an appropriation for such expenses must also be obtained.

In an effort to assist cities and towns that have not passed an enabling ordinance but who wish to establish the promotion of business ordinance, we are repeating wording contained in the old statute. Many municipalities have used similar wording in their enabling ordinance.

“City and town councils are authorized to budget and appropriate funds from the general fund of the city, or town, to pay the expense of or to reimburse city officials or town officials, as the case may be, for expenses incurred in promoting the best interest of the city or town. Such expenses may include, but not necessarily be limited to, rental of meeting places, meals, decorations, memorabilia, awards, expenses incurred in promoting industrial, commercial, and residential development, expenses incurred in developing relations with other units of government and any other expenses of a civic or governmental nature deemed by the mayor or the town council to be in the best interest of the city or town.”

This is furnished only for your information. Each city and town should establish, by ordinance, the parameters for such appropriations and expenditures. Such ordinance should list the specific types of promotional expenses which can be paid from moneys appropriated for such purpose. Please note that we would take audit exception to excessive amounts expended for employee meals, awards, gifts and similar expenses and amounts expended for items not listed in the ordinance.

**PARKS AND RECREATION – NONREVERTING CAPITAL FUND
AND NONREVERTING OPERATING FUND**

IC 36-10-3-20 concerns establishment and use of a special nonreverting capital fund and states:

“(a) Upon the request of the board, the fiscal body of the unit may establish, by ordinance, a special nonreverting capital fund for the purposes of acquiring land or making specific capital improvements. The fiscal body may include in the board’s annual budget an item and an appropriation for these specific purposes.

(b) Money placed in the nonreverting capital fund may not be withdrawn except for the purposes for which the fund was created, unless the fiscal body repeals the ordinance. The fiscal body may not repeal the ordinance under suspension of the rules.”

IC 36-10-3-22 relates to charging fees for park services and authorizes establishing either a special nonreverting operating fund or a special nonreverting capital fund and states:

“(a) Park and recreation facilities and programs shall be made available to the public free of charge as far as possible. However, if it is necessary in order to provide a particular activity, the board may charge a reasonable fee.

(b) The unit’s fiscal body may establish by ordinance upon request of the board:

(1) a special nonreverting operating fund for park purposes from which expenditures may be made as provided by ordinance, either by appropriation by the board or by the unit’s fiscal body;
or

(2) a special nonreverting capital fund for the purpose of acquiring land or making specific capital improvements from which expenditures may be made by appropriation by the unit’s fiscal body.

The unit’s fiscal body shall designate the fund or funds into which the unit’s fiscal officer (or county treasurer) shall deposit fees from golf courses, swimming pools, skating rinks, or other major facilities requiring major expenditures for management and maintenance. Money received from fees other than from major facilities or received from the sale of surplus property shall be deposited by the unit’s fiscal officer (or county treasurer) either in the special nonreverting operating fund or in the nonreverting capital fund, as directed by the board. However, if neither fund has been established, money received from fees or from the sale of surplus property shall be deposited in the unit’s general fund. Money from either special fund may be disbursed only on approved claims allowed and signed by the president and secretary of the board.”

Official Attorney General Opinion No. 54 of 1965 states there is no expressed authorization by the legislature to allow the park board to expend the activity fees in the special nonreverting fund without prior appropriation, and such money cannot be disbursed without a prior appropriation ordinance having been adopted according to law by the city council, county council, or town council.

Legislative intent was for the park special nonreverting operating fund to pay for park and recreation activities that were to be conducted on a self-supporting basis. For instance, such activities as horse shoe tournaments, swimming meets, little league, arts and crafts, and other similar activities. The special nonreverting capital fund was to be funded from an item within the park and recreation board’s annual budget with an appropriation made for “these specific purposes.” It was never suggested such activities should be undertaken in an effort to relieve local tax levies.

**PARKS AND RECREATION – NONREVERTING CAPITAL FUND
AND NONREVERTING OPERATING FUND (Continued)**

Notwithstanding apparent legislative intent, with the passage of the aforementioned statutes along with the authority provided in IC 36-1-3, the Home Rule Statute, we feel the city common council or town council has the authority to create by ordinance as many funds as they feel necessary to operate their unit. When nonreverting funds, capital or operating, are established properly pursuant to the statutes mentioned, no audit exceptions will be taken by the State Board of Accounts. An article in the September, 2010 Cities and Towns Bulletin sets out the State Board of Accounts audit position relating to the creation and use of nonreverting funds. The article also lists items that should be included within the enabling ordinances.

There are three situations that should be considered when creating the nonreverting funds.

(1) On diverting revenues from the Park Operating Fund to the new nonreverting funds, this will reduce the revenue available for funding operating fund expenditures.

(2) All expenditures from the nonreverting operating and/or nonreverting capital funds must have been authorized by the enabling ordinance(s) and prior appropriation(s) must be available. The appropriations need not go before the Department of Local Government Finance but do need approval by "the board or the unit's fiscal body" for the nonreverting operating fund and the "unit's fiscal body" for the nonreverting capital fund.

(3) If the city or town appeals to the Department of Local Government Finance (DLGF) for an excessive levy, the DLGF may insist that any balance or balances of such nonreverting funds be transferred to the park operating fund prior to any consideration of relief to the operating fund.

PENSION PLANS

In reviewing the Indiana Code, the following pension plans are available to employees of a city or town. Pursuant to IC 5-10.2-2-1, a city or town does not have authority to establish a pension plan by ordinance, resolution, or contract after January 1, 1995, without specific statutory authority.

	<u>Indiana Code</u>
Public Employees' Retirement Fund	5-10.3
Police Pension Fund – First Class Cities	36-8-7.5
1925 Police Pension Fund	36-8-6
1937 Firefighter's Pension Fund	36-8-7
1977 Police Officers' and Firefighters' Pension & Disability Fund	36-8-8
Municipal Utility Employees' Pension Fund	8-1.5-3-7
City Hospitals - Third Class Cities	16-23-1-25(c)
Housing Authorities	36-7-18-10(d)
Department of Redevelopment	36-7-14-12.2(17)
Deferred Compensation	5-10-1.1

Federally authorized individual retirement accounts and social security are the only other pension plans available to city and town employees. Inquiries relative to participation in the Public Employees' Retirement Fund should be directed to the Public Employees' Retirement Fund, One North Capital, Suite 001, Indianapolis, Indiana, 46204.

CASH CHANGE FUND

IC 36-1-8-2 states:

“(a) The fiscal body of a political subdivision may permit any of its officers or employees having a duty to collect cash revenues to establish a cash change fund. Such a fund must be established by a warrant drawn on the appropriate fund of the political subdivision in favor of the officer or employee, in an amount determined by the fiscal body, without need for appropriation to be made for it. (b) The officer and employee who establishes a cash change fund shall convert the warrant to cash, shall use it to make change when collecting cash revenues, and shall account for it in the same manner as is required for other funds of the political subdivision. (c) The fiscal body shall require the entire cash change fund to be returned to the appropriate fund whenever there is a change of the custodian of the fund or if the fund is no longer needed.”

A claim should be filed by the officer or employee designated by the fiscal body. The claim should contain a statement regarding the necessity for such fund together with the statutory reference (IC 36-1-8-2) authorizing its establishment. We do caution officials the amount advanced should not be greater than seems reasonably needed by the officer or employee.

PETTY CASH FUND

IC 36-1-8-3 states:

“(a) The fiscal body of a political subdivision may establish a petty cash fund for any of its offices in a like manner to that prescribed by Section 2 of this chapter. (b) The custodian of a petty cash fund shall use it to pay small or emergency items of operating expense. A receipt shall be taken for each expenditure made from the fund. (c) The custodian of a petty cash fund shall periodically file a voucher, with all original receipts totaling the cash claimed expended being attached to it, so that the fund can be reimbursed for expenditures from it. Reimbursements must be approved and made in the same manner as is required for other expenditures of the political subdivision.”

A claim for expenditures must be prepared and filed for reimbursement to the petty cash fund. Such reimbursement shall be approved, allowed and paid in the same manner as other claims. If desired, for safeguarding funds and providing proper records, the petty cash fund may be maintained and accounted for through a separate bank account under jurisdiction of the responsible officer or employee with bank issued check forms used for all payments from the account. If this method is desired, it should have prior approval by ordinance of the fiscal body of the political subdivision.

CASH CHANGE AND PETTY CASH FUNDS – CHANGING THE AMOUNTS SET BY COUNCIL

Since IC 36-1-8-2 and IC 36-1-8-3 require the fiscal body to set the amount of each cash change and petty cash fund, it is our position that any change in the amount of either fund would require the approval of the fiscal body.

CERTIFICATION OF NAMES AND ADDRESSES TO COUNTY TREASURER

The following questions concerning delinquent property taxes owed by city and town employees were recently posed at a training meeting for new Clerk-Treasurers.

Question: If a city or town employee appears on the list certified by the County Treasurer as being delinquent in the payment of his/her property taxes, is a Clerk-Treasurer required to make deductions from the employee's payroll check?

Answer: Yes. IC 6-1.1-22-14 states that on or before June 1 and December 1 of each year, the disbursing officer of each political subdivision shall certify the name and address of each person who has money due the person from the political subdivision to the county treasurer of each county in which the political subdivision is located. Upon the receipt of this information, the county treasurer shall search the records to ascertain if any person so certified is delinquent in the payment of property taxes. IC 6-1.1-22-15 states that if the county treasurer finds that a person whose name is certified to him under 6-1.1-22-14 is delinquent in the payment of taxes, he shall certify the name of that person and the amount of delinquency to the official of the political subdivision who is to make payment to the person. The disbursing officer shall periodically make deductions from money due the person and shall pay the amount of these deductions to the county treasurer. (Our Emphasis)

Question: How much money should be deducted from an employee's wages when making these periodic deductions?

Answer: While IC 6-1.1-22-15 requires a Clerk-Treasurer to make these deductions, the statute does not address how much can be deducted. We have always recommended to use the garnishment law in IC 24-4.5-5-105 as a guide to determine how much can be deducted. It is recommended that Clerk-Treasurers also consider entering into a written agreement with the employee which sets out the terms of the deductions.

ESTABLISHING THE ESTIMATED COST OF CAPITAL ASSETS

When it is not possible to determine the historical cost of capital assets owned by a governmental unit, the following procedure should be followed.

Develop an inventory of all capital assets which are significant for which records of the historical costs are not available. Obtain an estimate of the replacement costs of these assets. Through inquiry determine the year or approximate year of acquisition. Then multiply the estimated replacement cost by the factor for the year of acquisition from the Table of Cost Indexes. The resulting amount will be the estimated cost of the asset.

In some cases estimated replacement cost can be obtained from insurance policies; however, if estimated replacement costs are not available from insurance policies, you should obtain or make an estimate of the replacement costs.

If the replacement cost is estimated to be \$76,000.00 and the asset was constructed about 1928, then the estimated cost of the asset should be reported as \$6,080.00.

$$\$76,000.00 \times .08 = \$6,080.00$$

TABLE OF COST INDEXES
1913 to 2011

<u>Year</u>	<u>Index</u>	<u>Year</u>	<u>Index</u>	<u>Year</u>	<u>Index</u>	<u>Year</u>	<u>Index</u>
2011	1.00	1985	.48	1961	.13	1937	.07
2010	.97	1984	.46	1960	.13	1936	.06
2009	.95	1983	.44	1959	.13	1935	.06
2008	.96	1982	.43	1958	.13	1934	.06
2007	.92	1981	.40	1957	.13	1933	.06
2006	.90	1980	.37	1956	.12	1932	.06
2005	.87	1979	.32	1955	.12	1931	.07
2004	.84	1978	.29	1954	.12	1930	.07
2003	.82	1977	.27	1953	.12	1929	.08
2002	.80	1976	.25	1952	.12	1928	.08
2001	.79	1975	.24	1951	.12	1927	.08
2000	.77	1974	.22	1950	.11	1926	.08
1999	.74	1973	.20	1949	.11	1925	.08
1998	.73	1972	.19	1948	.11	1924	.08
1997	.71	1971	.18	1947	.10	1923	.08
1996	.70	1970	.17	1946	.09	1922	.08
1995	.68	1969	.16	1945	.08	1921	.08
1994	.66	1968	.16	1944	.08	1920	.09
1993	.64	1967	.15	1943	.08	1919	.08
1992	.62	1966	.14	1942	.07	1918	.07
1991	.61	1965	.14	1941	.07	1917	.06
1990	.58	1964	.14	1940	.06	1916	.05
1989	.55	1963	.14	1939	.06	1915	.05
1988	.53	1962	.13	1938	.06	1914	.05
1987	.51					1913	.04
1986	.49						