

CITIES AND TOWNS BULLETIN

AND UNIFORM COMPLIANCE GUIDELINES ISSUED BY STATE BOARD OF ACCOUNTS

SEPTEMBER 2012

PAGE 1

JUNE TRAINING SCHOOL

The State Board of Accounts extends its deepest appreciation to the officers and committees of the Indiana League of Municipal Clerks and Treasurers for making the arrangements and to the Indiana Association of Cities and Towns for handling the registrations at the school in Indianapolis. Next year's June School will be held in Fort Wayne as part of the League's Annual Conference during the week of June 9 through 13. Please note that the League's Fall District meetings will again qualify as State-called meeting days. This year's meetings will be in Middlebury on October 18 and in Nashville on October 24. Registration information will be sent out by the League for the District meetings.

COMMON COUNCIL – LEGAL COUNSEL AUTHORIZED

IC 36-4-6-24 authorizes the common council of any city to hire or contract with competent attorneys and/or legal research assistants on terms which the common council considers appropriate. The statute further states: "... (b) Employment of an attorney under this section does not affect the city department of law established under IC 36-4-9 (36-4-9-1 – 36-4-9-12). (c) Appropriations for salaries of attorneys and legal research assistants employed under this section may not exceed the appropriations for similar salaries in the budget of the city department of law."

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 personal 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 or IC 9-19-11-2, 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.

AID TO COMMUNITY FACILITIES AND PROGRAMS

IC 36-10-2-4 allows a city or town to establish aid, maintain, and operate libraries and museums, cultural, historical, and scientific facilities and programs, and community restitution or service facilities and programs.

Further, IC 36-10-2-5 allows a city or town to establish, aid, maintain, and operate neighborhood centers, community centers, civic centers, convention centers, auditoriums, arenas, and stadiums.

If a city or town desires to fund one of the aforementioned programs or activities, a contract should be entered into setting out what services are to be provided to the city or town in return for such aid.

MOVING TRAFFIC VIOLATIONS - ENFORCEMENT

IC 36-1-6-3(c) states that an ordinance defining a moving traffic violation may not be enforced in an ordinance violations bureau. Moving traffic violations 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.

SPEED LIMITS – CITY AND TOWN STREETS**Maximum Lawful Speeds**

Except when a special hazard exists that requires lower speed for compliance with IC 9-21-5-1, the slower speed limit specified in IC 9-21-5-2 or established as authorized by IC 9-21-5-3 is the maximum lawful speed. A person may not drive a vehicle on a highway at a speed in excess of the following maximum limits:

1. Thirty (30) miles per hour in an urban district.
2. Fifty-five (55) miles per hour, except as provided in (1), (3), (4), (5), (6) and (7).
3. Seventy (70) miles per hour on a highway on the national system of interstate and defense highways located outside of an urbanized area (as defined in 23 U.S.C. 101) with a population of at least fifty thousand (50,000), except as provided in (4).
4. Sixty-five (65) miles per hour for a vehicle (other than a bus) having a declared gross weight greater than twenty-six thousand (26, 000) pounds on a highway on the national system of interstate and defense highways located outside an urbanized area (as defined in 23 U.S.C. 101) with a population of at least fifty thousand (50,000).
5. Sixty-five (65) miles per hour on:
 - (A) U.S. 20 from intersection of U.S. 20 and County Road 17 in Elkhart County to the intersection of U.S. 20 and U.S. 31 in St. Joseph County;
 - (B) U.S. 31 from the intersection of U.S. 31 and U.S. 20 in St. Joseph County to the boundary line between Indiana and Michigan; and
 - (C) a highway classified by the Indiana Department of Transportation as an INDOT Freeway.

SPEED LIMITS – CITY AND TOWN STREETS (Continued)

6. On a highway that is the responsibility of the Indiana Finance Authority established by IC 4-4-11:
 - (A) seventy (70) miles per hour for:
 - (i) a motor vehicle having a declared gross weight of not more than twenty-six thousand (26,000) pounds; or
 - (ii) a bus; or
 - (B) sixty-five (65) miles per hour for a motor vehicle having a declared gross weight greater than twenty-six thousand pounds.
7. Sixty (60) miles per hour on a highway that:
 - (A) is not designated as part of the national system of interstate and defense highways;
 - (B) has four (4) or more lanes;
 - (C) is divided into two (2) or more roadways by:
 - (i) an intervening space that is unimproved and not intended for vehicular travel;
 - (ii) a physical barrier; or
 - (iii) a dividing section constructed to impede vehicular traffic; and
 - (D) is located outside an urbanized area (as defined in 23 U.S.C. 101) with a population of at least fifty thousand (50,000).
8. Fifteen (15) miles per hour in an alley. [IC 9-21-5-2]

Alteration of Speed Limits by a City or Town

Except as provided in IC 9-21-5-6 (e) and (f), whenever a local authority in the authority's jurisdiction determines on the basis of an engineering and traffic investigation that the maximum speed permitted is greater or less than reasonable and safe under the conditions found to exist on a highway or part of a highway, the local authority may determine and declare a reasonable and safe maximum limit on the highway. The maximum limit declared may do any of the following:

1. Decrease the limit within urban districts, but not to less than twenty (20) miles per hour.
2. Increase the limit within an urban district, but not to more than fifty-five (55) miles per hour during daytime and fifty (50) miles per hour during nighttime.
3. Decrease the limit outside an urban district, but not to less than thirty (30) miles per hour.
4. Decrease the limit in an alley, but to not less than five (5) miles per hour.
5. Increase the limit in an alley, but to not more than thirty (30) miles per hour.

The local authority must perform an engineering and traffic investigation before a determination may be made to change a speed limit under subdivision (2), (3), (4), or (5) or before the speed limit within an urban district may be decreased to less than twenty-five (25) miles per hour under subdivision (1).

Except as provided in IC 9-21-5-6 (f), a local authority in the authority's jurisdiction shall determine by an engineering and traffic investigation the proper maximum speed for all local streets and shall declare a reasonable and safe maximum speed permitted under this chapter for an urban district. However, an engineering and traffic study is not required to be performed for the local streets in an urban district under this subsection if the local authority determines that the proper maximum speed in the urban district is not less than twenty-five (25) miles per hour.

An altered limit established is effective at all times or during hours of darkness or at other times as may be determined when appropriate signs giving notice of the altered limit are erected on the street or highway.

SPEED LIMITS – CITY AND TOWN STREETS (Continued)

A local authority may not alter a speed limit on a highway or extension of a highway in the state highway system. A city or town may establish speed limits on state highways upon which a school is located. However, a speed limit established is valid only if the following conditions exist:

1. The limit is not less than twenty (20) miles per hour.
2. The limit is imposed only in the immediate vicinity of the school.
3. Children are present.
4. The speed zone is properly signed. After June 30, 2011, there must be:
 - (A) a sign located;
 - (i) where the reduced speed zone begins; or
 - (ii) as near as practical to the point where the reduced speed zone begins; indicating the reduced speed limit; and
 - (B) a sign located at the end of the reduced speed zone indicating:
 - (i) the speed limit for the section of highway that follows; or
 - (ii) the end of the reduced speed zone.
5. The Indiana Department of Transportation has been notified of the limit imposed by certified mail.

A local authority may decrease a limit on a street to not less than fifteen (15) miles per hour if the following conditions exist:

1. The street is located within a park or playground established under IC 36-10.
2. The:
 - (A) Board established under IC 36-10-3;
 - (B) Board established under IC 36-10-4; or
 - (C) Park authority established under IC 36-10-5; requests the local authority to decrease the limit.
3. The speed zone is properly signed.

A city, town, or county may establish speed limits on a street or highway upon which a school is located if the street or highway is under the jurisdiction of the city, town, or county, respectively. However, a speed limit established under this subsection is valid only if the following conditions exist:

1. The limit is not less than:
 - (A) twenty (20) miles per hour within an urban district; and
 - (B) thirty (30) miles per hour outside an urban district.
2. The limit is imposed only in the immediate vicinity of the school.
3. Children are present.
4. The speed zone is properly signed. After:
 - (A) June 30, 2011, there must be:
 - (i) a sign located where the reduced speed zone begins or as near as practical to the point where the reduced speed zone begins indicating the reduced speed limit; and
 - (ii) a sign located at the end of the reduced speed zone indicating the end of the reduced speed zone; and
 - (B) June 30, 2012, if the school operates on a twelve (12) month schedule, there must be a sign indicating that the school is an all year school. (IC 9-21-5-6)

SPEED LIMITS – CITY AND TOWN STREETS (Continued)**Disposition of Fines Where a City or Town Alters Speed Limits**

Official Opinion No. 88-4, issued by the Office of the Attorney General, stated that where a decrease or increase of a maximum speed limit is made by a city or town ordinance, a violation of the speed limit is completely local in nature and the fine may be deposited in the general fund of the city or town.

TRAVEL EXPENSE

In Official Opinion No. 74 of 1953 the Attorney General held that statutes do not authorize payment of a fixed travel allowance (fixed amount regardless of the number of miles traveled) to city officers and employees. It is our audit position that this same reasoning would apply to town officers and employees.

The opinion states in part: "... I can find no statutory authority for the payment of a fixed monthly travel allowance to municipal employees and the employment relationship does not change the fact that such a "travel allowance" is in the nature of extra compensation to the employees involved."

This opinion is limited to the payment of a fixed monthly travel allowance and should not be considered as touching upon the authority of a city to reimburse its employees for travel upon a mileage basis, or by any other proper method based on the expense of the travel."

Based on the foregoing opinion the State Board of Accounts has taken the audit position that city and town officers and employees may be reimbursed for actual miles traveled in their own motor vehicles on official business of the city or town at a reasonable rate per mile as fixed by an ordinance of the common council or the town council. If such an ordinance has not been enacted, we believe that the mileage reimbursement rate should be fixed by the board or commission having the authority to approve the claims. There is no statute limiting the rate per mile for mileage reimbursement. This is left to the discretion of the local officials. The common council or town council should also determine if parking and toll fees shall be a part of the mileage rate or if the city and town officials and employees are to be reimbursed for parking and tolls in addition to their mileage reimbursement.

PUBLICATION OF PENAL ORDINANCES

Except in case of an emergency requiring immediate implementation of an ordinance, a city and town ordinance providing penalty or forfeiture for a violation, which ordinance is not published in book or pamphlet form as a part of a municipal code pursuant to IC 36-4-6-14(c) and IC 36-5-2-10(b)(1), respectively, must be published in a newspaper as required by IC 5-3-1. To restate, if the ordinance is published in book or pamphlet form as a part of a municipal code, it need not be published in a newspaper.

CITY-COUNTY BUILDING AUTHORITIES

A city-county building authority may be created pursuant the provisions of IC 36-9-13. The creation of the building authority requires a resolution by the Board of County Commissioners, County Council and the Municipal Fiscal Body (Common Council or Town Council) of the county seat city or town prior to a public hearing on the question. A concurrent resolution by the same parties must be enacted after the public hearing, copies prepared and certified by affidavits, and filed with the county recorder.

Preliminary expenses of the building authority may be paid from funds provided by the city and county, or either of such units. Such preliminary expenses are to be repaid from the proceeds of the revenue bonds or loans executed by the building authority.

A city-county building authority has the power to finance and construct buildings for the joint and separate use of any one or more of the governmental units in the county and to lease such buildings to the governmental units.

DESTRUCTION OF BOND COUPONS

Authorization and procedures for destruction of public records may be found in IC 5-15-6. A review of the statute disclosed no authorization for use of cremation certificates by any governmental unit.

With the increased use of registered bonds we have taken the following audit position. Assuming there is no requirement in the bond ordinance that canceled bonds and coupons must be returned to the issuing agency. The State Board of Accounts will not take audit exception if the following conditions are followed: the Trustee provides a properly executed cremation certificate to the issuer clearly listing the individual bonds and coupons destroyed, the date of destruction, and a provision indemnifying the issuer if the listed bonds and coupons are ever presented a second time for redemption.

PARK NONREVERTING OPERATING FUND – USE OF PROGRAM BALANCES

Questions are received on the audit position of the State Board of Accounts regarding use of program activity balances within the special nonreverting operating fund. Specifically, can revenues generated from various programs within the special nonreverting operating fund be used to pay expenditures and obligations of other programs within the fund that have operated at a loss?

IC 36-10-3-22 states in part: "(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 ... " (Our Emphasis)

After receiving a request from the Park and Recreation Board, the Common Council or the Town Council should set out in the ordinance the types of expenditures approved and any other conditions and procedures related to such expenditures.

It is our audit position that the special nonreverting operating fund provide a means of funding a "particular activity" with a reasonable fee. Each such activity is to be more or less self-supporting. The fund was never intended to be a revenue producing mechanism enabling the Park and Recreation Board to operate outside of review of the Common Council or the Town Council.

PARK NONREVERTING OPERATING FUND – USE OF PROGRAM BALANCES (Continued)

The State Board of Accounts has never objected when immaterial project or activity surpluses have been generated and used to help other park activities within the special nonreverting operating fund. (Of course, this assumes the Common Council or the Town Council has granted such authority within the enabling ordinance.) As a general rule, when a program activity generates a large balance or surplus, we have instructed units to transfer this to the park operating fund. Conversely, if a program activity is unable to generate enough revenue to fund the program, the Board would have to appropriate and make expenditures from the park operating fund to make up the shortfall.

If, however, the legislative body approves in the enabling ordinance the practice of using moneys from various events for funding other approved events, the State Board of Accounts would not take audit exception. The approval must be set out in such detail that there is no question as to intent and the manner in which such funding is allowed.

STATE GAMING FUND – REVENUE SHARING

Before August 15 of 2003 and each year thereafter, the treasurer of state shall distribute the wagering taxes set aside for revenue sharing to the county treasurer of each county that does not have a riverboat according to the ratio that the county's population bears to the total population of the counties that do not have a riverboat. The county treasurer shall distribute the money received by the county as follows:

1. To each city located in the county according to the ratio the city's population bears to the total population of the county.
2. To each town located in the county according to the ratio the town's population bears to the total population of the county.
3. After the distributions required in subdivisions (1) and (2) are made, the remainder shall be retained by the county.

Money received by a city, town, or county may be used only:

1. to reduce the property tax levy of the city, town, or county for a particular year (a property tax reduction does not reduce the maximum levy of the city, town or county under IC 6-1.1-18.5);
2. for deposit in a special fund or allocation fund created under IC 8-22-3.5, IC 36-7-14, IC 36-7-14.5, IC 36-7-15.1, and IC 36-7-30 to provide funding for debt repayment;
3. to fund sewer and water projects, including storm water management projects;
4. for police and fire pensions; or
5. to carry out any governmental purpose for which the money is appropriated by the fiscal body of the city, town, or county. Money used under this subdivision does not reduce the property tax levy of the city, town, or county for a particular year or reduce the maximum levy of the city, town, or county under IC 6-1.1-18.5.

STATE GAMING FUND – REVENUE SHARING (Continued)

Additionally, IC 4-33-13-6 states that money paid to a unit of local government under IC 4-33-13 must be paid to the fiscal officer of the unit and may be deposited in the unit's general fund or riverboat fund established under IC 36-1-8-9, or both. This would require all revenue sharing distributions to be placed in the general fund or riverboat fund.

CONTRACTS – DOING BUSINESS WITH PUBLIC DEPOSITORY OFFICIALS OR PUBLIC PRINTERS

In an Official Opinion dated September 28, 1922, the Attorney General held that it would not only be lawful but compulsory for a governmental unit to publish a legal notice in a newspaper owned by an official of the governmental unit if the law governing legal advertising requires publication in such newspaper.

This same reasoning would apply to the deposit of public funds of a governmental unit in a bank in which an officer of the governmental unit has an interest if such bank qualified for receiving public funds under "The Depository Act of 1937." This position may be found in two unofficial advisory letters of the Attorney General dated November 21, 1963 and October 27, 1964.

Any other transactions with the governmental unit by the newspaper in the first paragraph and/or the bank in the second paragraph could be prohibited by IC 35-44.1-4 which lists conditions whereby a conflict of interest exists.

FEDERAL GRANTS – COGNIZANT AGENCIES

The term "Cognizant Agency" is commonly used in connection with federal grant auditing under the organization wide audit concept. Recipients expending more than 25 million a year in Federal awards shall have a cognizant agency for audit. The designated cognizant agency for audit shall be the Federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB makes a specific cognizant agency for audit assignment. The determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 2004, 2009, 2014 and every fifth year thereafter.

Oversight agency for the audit means the Federal awarding agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency for audit. When there is no direct funding, the Federal agency with the predominant indirect funding shall assume the oversight responsibilities.

ORDINANCE VIOLATIONS ON PRIVATE PROPERTY – REMOVAL COSTS

“(a) If a condition violating an ordinance of a municipal corporation exists on real property, employees or contractors of a municipal corporation may enter onto that property and take appropriate action to bring the property into compliance with the ordinance. However, before action to bring compliance may be taken, all persons holding a substantial interest in the property must be given a reasonable opportunity of at least ten (10) days but not more than sixty (60) days to bring the property into compliance. Continuous enforcement orders (as defined in IC 36-7-9-2) can be enforced and liens may be assessed without the need for additional notice. If the municipal corporation takes action to bring compliance, the expenses incurred by the municipal corporation to bring compliance constitute a lien against the property. The lien attaches when notice of the lien is recorded in the office of the county recorder in which the property is located. The lien is superior to all other liens except liens for taxes, in an amount that does not exceed:

1. ten thousand dollars (\$10,000) for real property that ;
 - A. contains one (1) or more occupied or unoccupied single or double family dwellings or the appurtenances or additions to those dwellings; or
 - B. is unimproved; or
2. twenty thousand dollars (\$20,000) for all other real property not described in subdivision (1).

(b) The municipal corporation may issue a bill to the owner of the real property for the costs incurred by the municipal corporation in bringing the property into compliance with the ordinance, including administrative costs and removal costs.

(c) A bill issued under subsection (b) is delinquent if the owner of the real property fails to pay the bill within thirty (30) days after the date of the issuance of the bill.

(d) Whenever a municipal corporation determines it necessary, the officer charged with the collection of fees and penalties for the municipal corporation shall prepare:

1. a list of delinquent fees and penalties that are enforceable under this section, including:
 - A. the name or names of the owner or owners of each lot or parcel of real property on which fees are delinquent;
 - B. a description of the premises, as shown on the records of the county auditor; and
 - C. the amount of the delinquent fees and the penalty; or
2. an instrument for each lot or parcel of real property on which the fees are delinquent.

(e) The officer shall record a copy of each list or each instrument with the county recorder, who shall charge a fee for recording the list or instrument under the fee schedule established in IC 36-2-7-10.

(f) The amount of a lien shall be placed on the tax duplicate by the auditor. The total amount, including any accrued interest, shall be collected in the same manner as delinquent taxes are collected and shall be disbursed to the general fund of the municipal corporation.

(g) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before conveyance to the subsequent owner. If the property is conveyed before the lien is recorded, the municipal corporation shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not later than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be considered a bad debt loss.

ORDINANCE VIOLATIONS ON PRIVATE PROPERTY – REMOVAL COSTS (Continued)

- (h) The municipal corporation shall release:
1. liens filed with the county recorder after the recorded date of conveyance of the property; and
 2. delinquent fees incurred by the seller;
- upon receipt of a written demand from the purchaser or a representative of the title insurance company or the title insurance company's agent that issued a title insurance policy to the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner and that the purchaser has not been paid by the seller for the delinquent fees.
- (i) The county auditor shall remove the fees, penalties, and service charges that were not recorded before a recorded conveyance to a subsequent owner upon receipt of a copy of the written demand under subsection (h)."

SEWER LIENS – RECORDING AND CERTIFYING

The officer charged with collection of unpaid sewage fees and penalties shall enforce their payment. The officer may defer enforcing the collection of the unpaid fees and penalties assessed until the unpaid fees and penalties have been due and unpaid for at least ninety (90) days.

As often as the officer determines is necessary in a calendar year, the officer shall prepare either of the following:

1. A list of the delinquent fees and penalties that are enforceable, which must include the following:
 - A. The name or names of the owner or owners of each lot or parcel of real property on which fees are delinquent.
 - B. A description of the premises, as shown by the records of the county auditor.
 - C. The amount of the delinquent fees, together with the penalty.
2. An individual instrument for each lot or parcel of real property on which the fees are delinquent.

The officer shall record a copy of each list or each individual instrument with the county recorder who shall charge a fee for recording the list or each individual instrument in accordance with the fee schedule established in IC 36-2-7-10. The officer shall then mail to each property owner on the list or on an individual instrument a notice stating that a lien against the owner's property has been recorded. Except for a county having a consolidated city, a service charge of five dollars (\$5), which is in addition to the recording fee charged, shall be added to each delinquent fee that is recorded. The amount of the recording fee should also include the amount required to record as well as release the lien.

Using the lists and instruments prepared and recorded, the officer shall, not later than ten (10) days after the list or each individual instrument is recorded, certify to the county auditor a list of the liens that remain unpaid for collection in the next May. The county and its officers and employees are not liable for any material error in the information on this list.

The officer shall release any recorded lien when the delinquent fees, penalties, service charges, and recording fees have been fully paid. The county recorder shall charge a fee for releasing the lien in accordance with IC 36-2-7-10.

SEWER LIENS – RECORDING AND CERTIFYING (Continued)

On receipt of the list, the county auditor of each county shall add a fifteen dollar (\$15) certification fee for each lot or parcel of real property on which fees are delinquent, which fee is in addition to all other fees and charges. The county auditor shall immediately enter on the tax duplicate for the municipality the delinquent fees, penalties, service charges, recording fees, and certification fees, which are due not later than the due date of the next installment of property taxes. The county treasurer shall then include any unpaid charges for the delinquent fee, penalties, service charge, recording fee, and certification fee to the owner or owners of each lot or parcel of property, at the time the next cycle's property tax installment is billed.

Except in a county containing a consolidated city, after certification of liens, the officer may not collect or accept delinquent fees, penalties, service charges, recording fees, or certification fees from property owners whose property has been certified to the county auditor.

If a delinquent fee, penalty, service charge, recording fee, and certification fee are not paid, they shall be collected by the county treasurer in the same way that delinquent property taxes are collected.

At the time of each semiannual tax settlement, the county treasurer shall certify to the county auditor all fees, charges, and penalties that have been collected. The county auditor shall deduct the service charges and certification fees collected by the county treasurer and pay over to the officer the remaining fees and penalties due the municipality. The county treasurer shall retain the service charges and certification fees that have been collected, and shall deposit them in the county general fund.

Fees, penalties, and service charges that were not recorded before a recorded conveyance shall be removed from the tax roll for a purchaser who, in the manner prescribed by IC 36-9-23-32(d), files a verified demand with the county auditor.

A board may write off a fee or penalty that is for less than forty dollars (\$40). [IC 36-9-23-33]

HYDRANT RENTAL – RECOVERY OF COSTS FROM CUSTOMERS

IC 8-1-2-103 allows municipalities to recover public fire protection costs paid to a public or municipally owned water utility by adopting an ordinance that provides including the costs in the basic rates of all customers of the utility. Fire protection costs are defined to include charges for the production, storage, transmission, sale and delivery or furnishing of water for fire protection.

This change in the recovery of fire protection costs shall not be considered to be a general increase in basic rates and charges of the public utility and is not subject to the notice and hearing requirements applicable to general rate proceedings.

The above method of recovering public fire protection costs is mandatory for water utilities that provide services in Marion County and portions of counties adjacent to Marion County.

STORM WATER MANAGEMENT SYSTEMS – FINANCING OF

IC 8-1.5-5-7 states, as follows:

“(a) The acquisition, construction, installation, operation, and maintenance of facilities and land for storm water systems may be financed through:

1. proceeds of special taxing district bonds of the storm water district;
2. the assumption of liability incurred to construct the storm water system being acquired;
3. service rates;
4. revenue bonds; or
5. any other available funds.

(b) Except as provided in IC 36-9-23-37, the board, after holding a public hearing with notice given under IC 5-3-1 and obtaining the approval of the fiscal body of the unit served by the department, may assess and collect user fees from all of the property of the storm water district for the operation and maintenance of the storm water system. The amount of the user fees must be the minimum amount necessary for the operation and maintenance of the storm water system. The assessment and collection of user fees under this subsection by the board of a county must also be approved by the county executive.

(c) The collection of the fees authorized by this section may be effectuated through a periodic billing system or through a charge appearing on the semiannual property tax statement of the affected property owner.

(d) The board shall use one (1) or more of the following factors to establish the fees authorized by this section:

1. A flat charge for each lot, parcel of property, or building.
2. The amount of impervious surface on the property.
3. The number and size of storm water outlets on the property.
4. The amount, strength, or character of storm water discharged.
5. The existence of improvements on the property that address storm water quality and quantity issues.
6. The degree to which storm water discharged from the property affects water quality in the storm water district.
7. Any other factors the board considers necessary.

(e) The board may exercise reasonable discretion in adopting different schedules of fees or making classifications in schedules of fees based on:

1. variations in the costs, including capital expenditures, of furnishing services to various classes of users or to various locations;
2. variations in the number of users in various locations; and
3. whether the property is used primarily for residential, commercial or agricultural purposes.

DEFERRED RETIREMENT OPTION PLAN (DROP) – 1925, 1937 AND 1977 RETIREMENT PLANS

IC 36-8-8.5-10 requires a member who elects to enter the DROP must agree to the following:

1. The member shall execute an irrevocable election to retire on the DROP retirement date and shall remain in active service until that date.
2. While in the DROP, the member shall continue to make contributions to the applicable fund under the provisions of that fund.
3. The member shall elect a DROP retirement date not less than twelve (12) months and not more than thirty-six (36) months after the member's DROP entry date.
4. The member may not remain in the DROP after the date the member reaches any mandatory retirement age that may apply to the member.
5. The member may make an election to enter the DROP only once in the member's lifetime.

The retirement benefit for a member who enters the DROP and retires on the member's DROP retirement date, or the date the member retires because of a disability as provided under IC 36-8-8.5-12-16.5(d), is determined under IC 36-8-8.5 rather than under the provisions of the applicable fund.

A member who retires on the member's DROP retirement date, or the date the member retires because of a disability as provided under IC 36-8-8.5-12-16.5(d), may elect to receive a retirement benefit in one of the following forms:

1. A retirement benefit paid by and calculated under the provisions of the applicable fund as if the member had never entered the DROP.
2. A retirement benefit paid by the applicable fund and consisting of:
 - (A) the DROP frozen benefit; plus
 - (B) an additional amount, paid as the member elects, calculated by multiplying:
 - (i) the amount of the DROP frozen benefit; by
 - (ii) the number of months that the member was in the DROP.

A member who chooses the retirement benefit must elect to receive the additional amount as:

1. a lump sum paid on;
 - (A) the member's DROP retirement date; or
 - (B) the date the member retires because of disability as provided under IC 36-8-8.5-12-16.5(d); or
2. three (3) equal annual payments:
 - (A) commencing on:
 - (i) the member's DROP retirement date; or
 - (ii) the date the member retires because of a disability; and
 - (B) thereafter paid on the anniversary of:
 - (i) the member's DROP retirement date; or
 - (ii) the date the member retires because of a disability.

In calculating a member's retirement benefit, the applicable fund must use the lesser of:

1. the member's actual years of service; or
2. thirty-two (32) years of service.

DEFERRED RETIREMENT OPTION PLAN (DROP) – 1925, 1937 AND 1977 RETIREMENT PLANS
(Continued)

The retirement benefits for a member who exist the DROP for any reason other than retirement on the member's DROP retirement date are calculated under the provisions of the applicable fund as if the member had never entered the DROP.

A member who enters the DROP must exit the DROP at the earliest of:

1. the member's DROP retirement date;
2. thirty-six (36) months after the member's DROP entry date;
3. the mandatory retirement age applicable to the member, if any;
4. the date the member retires because of a disability; or
5. the date determined under IC 36-8-8-24.8.

UNPAID PARKING TICKET FINES

If it appears from the records of a court that has jurisdiction to enforce ordinances that regulate parking violations that three (3) judgments concerning a motor vehicle have not been paid before the deadlines established by a statute, an ordinance, or a court order, the clerk of the court shall send a notice to the person who is the registered owner of the motor vehicle. The notice must inform the person of the following:

1. That the clerk will send a referral to the Bureau of Motor Vehicles if the judgments are not paid within thirty (30) days after the notice was mailed.
2. That the referral will result in the suspension of the motor vehicle's registration if the judgments are not paid.

A clerk may send a referral to the Bureau of Motor Vehicles if the judgments are not paid not later than thirty (30) days after a notice was mailed. The referral must include the following:

1. Any information known or available to the clerk concerning the following of the motor vehicle:
 - (A) The license plate number and year of registration.
 - (B) The name of the owner.
2. The date on which each of the violations occurred.
3. The law enforcement agencies responsible for the parking citations.
4. The date when the notice required under IC 9-30-11-3 was mailed.
5. The seal of the clerk. [IC 9-30-11-3 and IC 9-30-11-4]

If the city or town enforces parking violations through an ordinance violations bureau, then the city or town attorney would be required to bring action to enforce nonpayment of parking fines in county, city or town court before the provisions of IC 9-30-11 could be used.

UNAUTHORIZED COURT FEES

The following joint letter dealing with the assessment and charging of fees not authored by state statute or Supreme Court rule was issued by the Division of State Court Administration and the State Board of Accounts on September 3, 2008.

| | | |
|--|--|---|
| <p style="font-size: 24pt; font-weight: bold; text-align: center;">STATE OF INDIANA</p> <hr style="border: 1px solid black;"/> <p style="text-align: center;">DIVISION OF STATE COURT ADMINISTRATION</p> <p style="text-align: center;">RANDALL T. SHEPARD, CHIEF JUSTICE</p> <p style="text-align: center;">LILIA G. JUDSON, EXECUTIVE DIRECTOR DAVID J. REMONDINI, CHIEF DEPUTY EXECUTIVE DIRECTOR</p> |  | <p style="text-align: center; font-weight: bold;">SUPREME COURT</p> <hr style="border: 1px solid black;"/> <p style="font-size: 8pt;">30 SOUTH MERIDIAN STREET SUITE 500 INDIANAPOLIS, IN 46204-3508 (317) 232-2542 FAX (317) 233-6586 www.IN.gov/judiciary</p> |
|--|--|---|

September 3, 2008

Dear Judge and Clerk:

This is a joint letter from the State Board of Accounts and the Indiana Supreme Court Division of State Court Administration intended to bring to your attention important information about assessment and charging of fees. It has come to our attention that some clerks and courts are assessing and collecting fees that are not authorized by state statute or Supreme Court rule. Such fees should not be charged or collected and, if you are collecting fees not authorized by a specific statute or Supreme Court Rule, we ask that you discontinue such practice immediately.

As you are aware, Indiana Code 5-7-2-1 states:

It shall be unlawful for any officer in this state, under color of his office, to tax, or permit to be taxed in his office, any fee or sum of money that is not legally allowable under the statute or statutes of this state.

Any fees charged by a county or township officer in this state must be “specified in IC 33-37 and IC 36-2. . . .” (Indiana Code 5-7-2-2.) Finally, any county, township, or other public officer of the state who charges a fee that is not provided for by statute may be subject to civil liability. Indiana Code 5-7-2-8 provides:

If any county, township, or other public officer of the state shall violate or disregard this chapter or any part thereof and shall thereby obtain any fee or sum of money denied him by this chapter or any part of this chapter, the person or persons from whom he received such money shall have the right of civil action in any of the courts of the county for the recovery of such money, and shall, in connection therewith, recover the sum of not less than ten dollars (\$10) damages and not more than thirty dollars (\$30) damages. . . .

Additionally, under state law state agencies may not charge a fee for inspecting, searching for, examining, or recovering a public document (Indiana Code 5-14-3-8.) A

UNAUTHORIZED COURT FEES (Continued)

fee may be charged for *copying* a public record, but it may not exceed the uniform copying fee established by the Indiana Department of Administration.

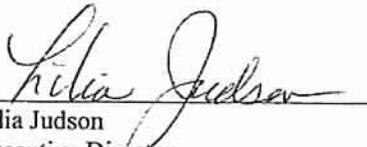
The laws cited above make it clear that officials (for our purposes, courts and clerks) can charge only those fees that have been authorized by statute. A few Supreme Court Rules also provide for the charging of fees in certain very limited circumstances. If a fee is not provided for under Indiana law, it cannot be assessed. Likewise, neither courts nor clerks are authorized to "create" fees.

Title 5 of the Indiana Code further provides for the accounting of public funds. Indiana's State Board of Accounts (SBOA), established by Ind. Code 5-11-1-1, "shall formulate, prescribe, and install a system of accounting and reporting in conformity with this chapter. . . ." (Indiana Code 5-11-1-2(a).) The requirements for this accounting and reporting system are set forth in Indiana Code 5-11-1-2. The forms for the reports are to be "formulate[d], prescribe[d], and approve[d]" by the SBOA (Indiana Code 5-11-1-6.) The review of financial accounts is conducted by examiners employed or engaged by the SBOA (Indiana Code 5-11-1-7.)

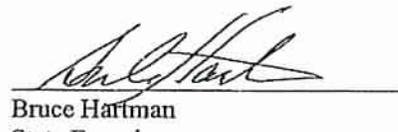
It is our hope that this letter provides guidance to you as you engage in the assessment and collection of fees. To the extent that you may have questions regarding your obligations in this respect, we would urge you to carefully review the appropriate statutes, especially those we have cited above. And, of course, please know that we are always available to assist you with any ongoing issues you may have with regard to Indiana's laws governing fees.

We thank you for your attention to this matter.

Sincerely,



Lilia Judson
Executive Director
Division of State Court Administration
Indiana Supreme Court



Bruce Haftman
State Examiner
Indiana State Board of Accounts

DISQUALIFICATION OF CONTRACTORS DEALING WITH IRAN

Public Law 21, Acts of 2012, added IC 5-22-16.5. This law requires the Indiana Department of Administration to develop and publish a list of vendors that would be disqualified due to dealing with Iran. The law provides for exceptions of vendors that would be disqualified and the steps that political subdivisions must take in order to do business with these vendors. The law also provides that a contractor being awarded a contract must certify in writing that the person is not engaged in investment activities in Iran. The certification is to be placed in the contract file.

QUESTIONS FROM THE JUNE 2012 CITIES AND TOWNS TRAINING SCHOOL

Question No. 1: Our Town recently borrowed \$20,000 from our Sewage Utility and is going to repay the loan in three years. Can we do that?

Answer: Yes. Since IC 36-9-23 does not prohibit or provide for a loan from a sewage utility to a city or town, it is our audit position that a sewage utility could make a loan to a city or town if the city or town passes a Home Rule Ordinance under IC 36-1-3 setting out the provisions and terms of the loan.

Question No. 2: Our Town Council passed an ordinance that set a fee of one dollar (\$1) for a copy of a town document and fifty cents (\$.50) for each additional copy. Is this a price that we can charge?

Answer: No. IC 5-14-3-8 states that the fee for the copying of 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 copying the document.

In accordance with IC 5-14-3-8, “. . . ‘actual cost’ means the cost of paper and the per-page cost for use of copying or facsimile equipment and does not include labor or overhead costs.”

Question No. 3: Do we need to print out materials which are on the SBOA website when attending State-called meetings?

Answer: Yes. All handout material for State-called meetings will be available on our website (www.in.gov/sboa) two weeks before the date of the meetings. A reminder will be emailed to your email address prior to the meeting. Click on “Meeting Materials” to obtain the handouts.

Question No. 4: If the Clerk-Treasurer retires at the end of a year, who is responsible for the reports that are due after the end of the year?

Answer: The new Clerk-Treasurer is responsible for filing such reports. However, we strongly encourage the former Clerk-Treasurer to offer assistance in filing the reports.

QUESTIONS FROM THE JUNE 2012 CITIES AND TOWNS TRAINING SCHOOL (Continued)

Question No. 5: Can two people work in Gateway at the same time?

Answer: Yes. However, be sure that those persons are not working on the same section at the same time.

Question No. 6: Our Town Council Members are paid quarterly. Can I pay their last payment on December 24th?

Answer: No. IC 5-7-3-1 prohibits the payment of payroll before a person earns the pay.

Question No. 7: Please describe what is required by IC 5-11-9-4. Does the SBOA have a prescribed detailed time record form for this?

Answer: You can use General Form No. 99A, Employee Service Record, to record the time an employee works in more than one position for a city or town or when the employee also works for another governmental unit.

Question No. 8: Will the SBOA be auditing our debt reporting on the Gateway?

Answer: Any debt reporting on the Gateway would be subject to audit.

Question No. 9: The new law on mowing liens allows us to mail out one certified letter per mowing season. Where do we find the specific wording needed for this?

Answer: IC 36-7-10.1-3 sets out what should be in your ordinance and the requirements for posting subsequent violations of such ordinance.

Question No. 10: Are EFT payments of claims allowed for towns or just utilities? Do you need ordinance for this?

Answer: IC 36-1-8-11.5 allows the governing bodies of cities and towns or the governing body of a city or town utility to pass an ordinance or resolution to allow for the payment of claims through electronic funds transfer.

Question No. 11: Does the new Nepotism Law prohibit the appointment of cousins of council members to a town board?

Answer: No. The definition of "relative" in the new law (IC 36-1-20.2) does not list "cousin" as a relative.

QUESTIONS FROM THE JUNE 2012 CITIES AND TOWNS TRAINING SCHOOL (Continued)

Question No. 12: We have a volunteer firefighter who serves on our council. Since he is not paid, can he still serve on the council and be a volunteer?

Answer: Yes. But the volunteer firefighter may only continue to serve in both positions until his/her current term of office he/she holds or January 1, 2013, expires.

Question No. 13: Can a volunteer firefighter serve as a Township Advisory Board member?

Answer: Yes. See Answer to No. 12.

Question No. 14: Can a volunteer firefighter also serve as a Police Reserve Officer?

Answer: Yes. The new Nepotism/Contracting laws would not apply to this situation.

Question No. 15: One of our council members is a firefighter in a neighboring town that we have a mutual aid agreement with for fire protection. Will the council member need to resign when the new law on holding office and being a government employee takes effect?

Answer: No. IC 3-5-9-4 specifically excludes fire protection services provided under mutual aid agreements.

Question No. 16: Are we required to use Utility Form No. 310, Guarantee Deposit Receipts?

Answer: Yes. You must use the prescribed form or an approved version of the form.

Question No. 17: If the Council passes a resolution to allow us to pay bills by electronic funds transfer, can we allow vendors to make deductions directly from our bank account?

Answer: No. Our position is that transactions paid by electronic funds transfer should be initiated by you through your bank.

Question No. 18: We recently discovered that sewer service was being provided to a resident for over ten (10) years without the customer being billed for the service. How far back can we charge this customer for the service?

Answer: We have always recommended that the Statute of Limitations for an unpaid utility bill would be six (6) years.

QUESTIONS FROM THE JUNE 2012 CITIES AND TOWNS TRAINING SCHOOL (Continued)

Question No. 19: We recorded and certified a sewer lien but noticed a newspaper ad that showed the property was up for Sheriff's Sale. Will that sale affect our lien?

Answer: As long as your lien was recorded and certified before conveyance of the property to a subsequent owner, your lien cannot be removed through a Sheriff's Sale.

Question No. 20: We have been told that uncashed payroll checks must be turned over to the State as unclaimed property. Is this true?

Answer: No. The disposition of uncashed payroll checks would be handled in the same manner as other old outstanding checks as set out in IC 5-11-10.5.

Question No. 21: We pay employees who work at two (2) positions for the City who work over forty (40) hours at an overtime rate based on the average of the regular hourly rates. Is this required?

Answer: This is our understanding from the Wage and Hour Division of the Federal Department of Labor. You should contact their office at (317) 226-6772 for questions regarding overtime.

Question No. 22: Can the utilities and the City all use one bank account?

Answer: Per the Cities and Towns Accounting and Uniform Guidelines Manual on page 4-4, we recommend that there are separate bank accounts for funds belonging to each utility.

Question No. 23: What is the deadline for passing a salary ordinance for a town?

Answer: We recommend towns adopt their salary ordinances in conjunction with the budget process, but such adoption could be finalized as late as December 31.

Question No. 24: Can we file a lien on property for failure to pay a water bill?

Answer: No. There are no provisions in IC 8-1.5 that provide for liens to be filed on property for delinquent water bills.

Question No. 25: How often can I file sewer liens?

Answer: IC 36-9-23-33(b) allows the officer responsible for filing sewer liens to file such liens as often as the officer determines is necessary.

QUESTIONS FROM THE JUNE 2012 CITIES AND TOWNS TRAINING SCHOOL (Continued)

Question No. 26: The new smoking ban law prohibits smoking in State-owned vehicles. Does this apply to town-owned vehicles as well?

Answer: No. IC 7.1-5-12 only applies to State-owned vehicles.

Question No. 27: To increase sewer rates, do you have to get approval from the Indiana Utility Regulatory Commission (IURC)?

Answer: No. However, Public Law 139, Acts of 2012, allows water and sewer customers outside the city or town's limits to petition the IURC for an adjustment in rates where the rates charged are more than fifteen percent (15%) higher than the rates charged to persons residing within the city or town limits.

Question No. 28: Are we required to use a newspaper which is free for our legal ads?

Answer: No. IC 5-3-1-0.4 requires a newspaper to have at least fifty percent (50%) of all copies circulated paid for by subscribers or other purchasers at a rate that is not nominal in order to be a newspaper you would be required to use.

Question No. 29: How much money in the MVH Fund can be used for law enforcement?

Answer: For cities and towns with a population of less than 5,000, fifteen percent (15%) of the city or town's MVH state distributions can be used for law enforcement purposes. In cities and towns with populations of 5,000 or more, the limit is ten percent (10%).

Question No. 30: In lieu of providing family health insurance coverage to our employees, we reimburse our employees for the difference between the cost of the spouse's single plan versus the cost of a family plan. Is this amount taxable to the employee?

Answer: It is our understanding from the Internal Revenue Service that this is probably taxable income for the employee.

Question No. 31: Is the benefit provided in Question No. 30 reportable on the 100-R next year?

Answer: We recommend you indicate on the 100-R filing that you are providing such benefit.