

TOWNSHIP BULLETIN

AND UNIFORM COMPLIANCE GUIDELINES
ISSUED BY STATE BOARD OF ACCOUNTS

Volume No. 284, Page 1

February 2009

ITEMS TO REMEMBER

MARCH

March All local investment officers shall reconcile at least monthly the balance of public funds, as disclosed by the records of the local officers, with the balance statements provided by the respective depositories.

APRIL

April 10: Good Friday - Legal Holiday (IC 1-1-9-1)

April 15: Last day to make pension report and payment for first quarter by townships participating in PERF.

April 30: Last day to file quarterly report, Form 941, to the Internal Revenue Service for federal and social security taxes for the first quarter.

April 30: Last day to make report for first quarter to the Department of Workforce Development.

April All local investment officers shall reconcile at least monthly the balance of public funds, as disclosed by the records of the local officers, with the balance statements provided by the respective depositories.

MAY

May 25: Memorial Day - Legal Holiday (IC 1-1-9-1)

May 31: On or before June 1 and December 1 of each year (or more frequently if the county legislative body adopts an ordinance requiring additional certifications) the township shall certify a list of the names and addresses of each person who has money due from the township to the county treasurer. (IC 6-1.1-22-14).

May All local investment officers shall reconcile at least monthly the balance of public funds, as disclosed by the records of the local officers, with the balance statements provided by the respective depositories.

SOCIAL SECURITY WITHHOLDINGS - 2009

We understand that for the maximum amount of taxable and creditable annual earnings subject to social security will increase to \$106,800 in 2009. No maximum base for Medicare will exist. Rates will remain at the 2008 level at a combined rate of 7.65 percent (both employer and employee for a total of 15.3 percent) representing a 6.20 percent rate for social security and 1.45 percent for Medicare.

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TOWNSHIP TRUSTEE'S MEETING

The State Board of Accounts' Meeting for Township Trustees, November 19, 2008, Indianapolis, was informative as indicated by various compliments and the large turnout of hundreds of township representatives. Thanks as always to the Indiana Township Association for their cooperation in our having the meeting in conjunction with the Township Convention as has been the situation for over twenty years. These meetings continue to demonstrate the success of Townships and the State Board of Accounts working together to solve problems.

Trustees not attending the 2008 meeting are encouraged and specifically requested to attend similar meetings we plan on calling in 2009. A wide range of topics were discussed both during and between sessions which pertain to your audits by the State Board of Accounts.

We appreciate the compliments on the State Board of Accounts' 2008 meeting. We welcome your sending in suggestions for additional areas you would like addressed at the 2009 meeting which will be held on September 23, 2009. We anticipate seeing all Township Trustees at our meetings in 2009. We are always open to suggestions on ways to improve the meeting formats.

**PAYMENT OF EMPLOYEES DURING ABSENCE FROM
WORK ON ACCOUNT OF COMPENSABLE INJURY**

Official Opinion of the Indiana Attorney General Number 134 of 1945, established guidelines to be observed in paying school teachers in instances where an absence from work was because of circumstances under which the teacher received compensation benefits through the provisions of the Workmen's Compensation Act (Worker's Compensation Act). Clarification was made in the Opinion, that a teacher who received benefits under the Workmen's Compensation Act (Worker's Compensation Act) while absent from work, would be entitled to receive from a school corporation only the difference between the amount received from Workmen's Compensation Act (Worker's Compensation Act) and the full benefits provided by law allowing teachers to be absent without loss of pay for a stated number of days; the laws considered in the Opinion do not authorize double payment for the same injury.

Official Opinion Number 17 of 1975 supports the prior Opinion in that while a teacher is entitled to each earned sick leave day for actual sickness or injury, in the event a teacher also receives Workmen's Compensation (Worker's Compensation) payments during the same time frame as receiving sick leave, an adjustment must be made so that the combined earned sick leave days and Workmen's Compensation (Worker's Compensation) payments do not exceed that teacher's normal salary for the same time frame.

Applying the aforementioned to townships, we are of the audit position that if an employee is off work and receiving payments from a township for sick days, the employee should either sign the Worker's Compensation payment over to a township or receive from a township the difference between the employee's daily rate and the amount received from Worker's Compensation.

RATES FOR LEGAL ADVERTISING

The rates for legal advertising did not change for calendar year 2009. IC 5-3-1-1 does not authorize any change in legal rates after December 31, 2005. Therefore, publishers of qualified publications should charge in accordance with the 2005 rates published in Township Bulletin, Vol. 268 from February 2005.

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ELECTION BOARD AND JURY DUTY

Jury duty is considered to be a civic responsibility which should not be evaded by public employees.

IC 33-37-10-1 states in part "(a) A juror of a circuit, superior, county, or probate court or a member of a grand jury is entitled to the sum of the following: (1) Except as provided in subsection (f), an amount for mileage at the mileage rate paid to state officers and employees for each mile necessarily traveled to and from the court. (2) Payment at the rate of: (A) fifteen dollars (\$15) for each day the juror is in actual attendance in court until the jury is impaneled; and (B) forty dollars (\$40) for each day the juror is in actual attendance after impaneling and until the jury is discharged. (b) A county fiscal body may adopt an ordinance to pay from county funds a supplemental fee in addition to the fees prescribed by subsection (a)(2). (c) A juror of a city or town court is entitled to the sum of the following: (1) Except as provided in subsection (f), an amount for mileage at the mileage rate paid to state officers and employees for each mile necessarily traveled to and from the court. (2) Fifteen dollars (\$15) per day while the juror is in actual attendance. (d) A city or town fiscal body may adopt an ordinance to pay from city or town funds a supplemental fee in addition to the fee prescribed by subsection (c)(2)."

We are of the audit position that a township may pay an employee the difference between the amount of jury duty pay per day to that employee and the amount of a regular day's pay for that employee as if the employee had worked a regular day (no overtime). The following audit position applies to all employees for which the daily rate is greater than the daily amount paid for jury duty.

1. A township employee could receive the full amount of regular salary and not claim compensation for jury duty.
2. A township employee could receive the compensation for jury duty and said amount could be deducted from the regular salary.
3. A township employee could receive the full amount of regular salary (no overtime) and turn over the warrant for serving on the jury to your office to be receipted into the fund from which the regular salary is paid.

The State of Indiana mileage rate is currently forty-four cents (\$.44) per mile. Travel reimbursement belongs to the employee without being considered compensation for purposes of our audit position. We suggest that the trustee and the township board adopt a policy establishing rules and regulations for jury duty by township employees.

GROUP INSURANCE - DEPENDENTS OF EMPLOYEES

Official Opinion 50 of the Attorney General of the State of Indiana, issued in 1965, concluded that there is no statutory authority for a governmental unit to purchase group hospitalization insurance coverage for dependents of employees. However, the Attorney General issued Official Opinion 44 (1966) as a clarification of the 1965 opinion.

The 1966 opinion concluded that a governmental unit may contribute toward the insurance of legal dependents of the employee. By "legal dependents" the opinion refers to those dependents for whom the employee is required by law to pay their medical expenses, which would include the employee's wife and minor dependent children. However, not included are those persons, whether or not related, for whom the employee voluntarily assumes liability for such expenses or insurance coverage. IC 5-10-8-2.6(c) states in part "A public employer may pay a part of the cost of group insurance . . ." (Our Emphasis) Therefore, a township may not pay the entire cost of such insurance.

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HOME RULE

The State Board of Accounts has through the years received inquiries and comments concerning the application of home rule. Accordingly, in an attempt to clarify some questions related to usage of home rule, we directed the following questions to the Attorney General's Office. The Conclusion portion of the response from the Attorney General's Office follows the questions.

1. In order for a school corporation or other unit of government to use home rule for a particular situation, must they enact a specific ordinance or resolution adopting the home rule provisions and stating the policy which is to be enacted as a result?
2. Can a school corporation or other unit of government expand the provisions of a statute with home rule?

For example, IC 5-10-1.1-1, regarding public employees deferred compensation plans, specifically allows a school corporation to establish a savings plan that is a defined contribution plan qualified under Section 401(a) of the Internal Revenue Code, and contribute amounts to the plan on behalf of eligible employees to be credited and allocated to an account for each employee. A school corporation claimed that "home rule powers" allowed them to contribute amounts to an employee retirement plan under Section 403(b) of the Internal Revenue Code.

3. Most units of government have the power to enter into contracts. Can a school corporation or other unit of government enter into a contract containing provisions which are not granted by statute without specifically enacting home rule under a separate ordinance or resolution?

For example, a school corporation collectively bargained for wage related benefits under IC 20-7.5-1-4 and entered into a collective bargaining agreement which included a retirement plan under Section 403(b) of the Internal Revenue Code without first passing a home rule resolution authorizing such a benefit.

CONCLUSION

It is our opinion that a local unit of government or a school corporation must adopt an ordinance, resolution or written policy before exercising its home rule powers. A local unit of government may not enter into a contract as a substitute for properly adopting an ordinance, resolution or written policy. In addition, those entities may not exercise home rule powers in an area pre-empted by the General Assembly.

OPTICAL IMAGED CHECKS

IC 5-15-6-3(a) concerning optical imaging of checks states, in part: ". . . 'original records' includes the optical image of a check or deposit document when: (1) the check or deposit document is recorded, copied, or reproduced by an optical imaging process . . . ; and (2) the drawer of the check receives an optical image of the check after the check is processed for payment . . ."

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OPTICAL IMAGED CHECKS

(Continued)

Furthermore, IC 26-2-8-111 states in part:

(a) "If a law requires that certain records be retained, that requirement is met by retaining an electronic record of the information in the record that:

- (1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and
- (2) remains accessible for later reference.

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (a)."

TRUSTEE COMPENSATION

We continue to receive inquiries concerning trustees receiving compensation for cemetery care, township assistance investigations, weed eradication, fire territory administrators is the provider unit, etc. Some of the situations involve payment from funds other than the township fund, e.g. the township assistance fund.

IC 36-6-4-3 concerning a township trustee's responsibilities and duties states, "The executive shall do the following: (1) Keep a written record of official proceedings. (2) Manage all township property interests. (3) Keep township records open for public inspection. (4) Attend all meetings of the township legislative body. (5) Receive and pay out township funds. (6) Examine and settle all accounts and demands chargeable against the township. (7) Administer township assistance under IC 12-20 and IC 12-30-4. (8) Perform the duties of fence viewer under IC 32-26. (9) Provide and maintain cemeteries under IC 23-14. (10) Provide fire protection under IC 36-8, except in a township that: (A) is located in a county having a consolidated city; and (B) consolidated the township's fire department under IC 36-3-1-6.1. (11) File an annual personnel report under IC 5-11-13. (12) Provide and maintain township parks and community centers under IC 36-10. (13) Destroy detrimental plants, noxious weeds, and rank vegetation under IC15-3-4. (14) Provide insulin to the poor under IC 12-20-16. (15) Perform other duties prescribed by statute."

IC 36-6-6-10 concerning compensation of officers and employees states in part, "(b) **The township legislative body shall fix** the: **(1) salaries;** (2) wages; (3) rates of hourly pay; and (4) remuneration other than statutory allowances; of **all officers and** employees of the township . . . (d) Except as provided in subsection (e), the township legislative body may not alter the salaries of elected or appointed officers during the fiscal year for which they are fixed, but it may add or eliminate any other position and change the salary of any other employee, if the necessary funds and appropriations are available. . . ." Our Emphasis

We are not aware of any statutory provisions which would allow a trustee to circumvent a township board's authority to "fix the salaries" of a trustee by "contracting with themselves" to provide for cemetery care, township assistance investigations, weed eradication, and other statutory duties. etc. Therefore, the State Board of Accounts is of the audit position that compensation provided by a township board in accordance with IC 36-6-6-10 is all inclusive for all duties performed by a trustee. We will request reimbursement for any payments received above the compensation established for any township trustee, board member or employee by IC 36-6-6-10.