

THE COUNTY BULLETIN

And Uniform Compliance Guidelines

ISSUED BY STATE BOARD OF ACCOUNTS

Vol. No. 388

July 2013

REMINDER OF ORDER OF BUSINESS

July

- 4 Legal Holiday - Independence Day [IC 1-1-9-1]
 - 9 Distribute congressional interest to school corporations - second Monday. [IC 20-42-2-7]
 - 20 Last day to report and make payment of balance of State and County Income Tax withheld in the month of June to Indiana Department of Revenue.
 - 31 Last day to file quarterly unemployment compensation reports with Indiana Department of Workforce Development.
- Last day for county treasurer to mail demand notices to delinquent personal property taxpayers. [IC 6-1.1-23-1]

August

- 7-9 County Treasurer's Annual Conference – Indianapolis
- 20 Last day to report and make payment of State and County Income Tax withheld in the month of July to Indiana Department of Revenue.

September

- 2 Legal Holiday - Labor Day. [IC 1-1-9-1]
- 20 Last day to report and make payment of State and County Income Tax withheld in the month of August to Indiana Department of Revenue.

INTERNAL CONTROLS

Internal controls are the policies and procedures used by management to ensure that their programs and functions operate efficiently and effectively in conformance with applicable laws and regulations. One purpose of internal control is to ensure that financial reporting of the financial statements and the schedule of expenditures of federal awards are completed accurately. It is also used to reduce the risk associated with fraud related to the operations of the governmental unit. Internal control is essentially a check and balance system over the operations. The foundation for a good internal control system starts with making sure that there are appropriate procedures in place to ensure that errors and fraud are either prevented or detected and corrected in a timely manner.

In order to have an effective internal control system, it is important to have proper segregation of duties. Segregation of duties is a common term referred to in relation to internal control. This means to have a separation of functions over certain activities that would provide internal control. The fundamental premise of segregation of duties is that an individual or small group of individuals should not be in a position to initiate, approve, undertake, and review the same action. An example of appropriate segregation of duties would be having one individual prepare claims, having another individual review and approve the claims, and having a third individual sign the checks for payment of the claims. Without proper segregation of duties, it is difficult to have an effective system of internal control. Sufficient compensating controls would then need to be implemented. This might entail random verification and approval by the official at different points in the process or switching duties. There are two main advantages to implementing segregation of duties. The first is that fraud is more difficult to perpetrate when proper segregation of duties is in place because it would require collusion of two or more individuals. Secondly, with several individuals involved in the process, innocent errors are more likely to be detected and corrected. Officials have the fiduciary responsibility to ensure the proper accountability of financial activity. This is accomplished by making sure there is proper oversight, reviews and approvals.

The Accounting and Uniform Guidelines Manual for each unit provides that internal controls be established and put into operations. Therefore, a sound internal control system should be put into place to ensure accurate reporting of the financial statements and the schedule of expenditures of federal awards. Additionally, a sound internal control system should be put into place to ensure that all requirements related to federal awards received are complied with. The requirements of a federal program can be obtained from various sources which include but are not limited to the grant agreement with the Federal agency/pass-through entity, the appropriate section of the Code of Federal Regulations and United States Code, and applicable handbooks and other guidance provided by the Federal agency and/or pass-through entity.

In addition to the guidance noted above, the A-102 Common Rule and OMB Circular A-110 (2 CFR part 215) require that non-Federal entities receiving Federal awards (i.e., auditee management) establish and maintain internal control designed to reasonably ensure compliance with Federal laws, regulations, and program compliance requirements. OMB Circular A-133 requires auditors to obtain an understanding of the non-Federal entity's internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk for major programs, plan the testing of internal control over major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program, and, unless internal control is likely to be ineffective, perform testing of internal control as planned.

As the auditor of your local governmental entity, the State Board of Accounts will be assessing the controls you have in place over the preparation of the financial statements and schedule of expenditures of federal programs and over the compliance with the requirements of federal programs. If we determine that controls for any of these areas are either not in place or are not operating effectively, we are required by the standards we follow to report those issues. This reporting is required to be made in the form of written Federal findings included in the audit report. In order for us to be able to determine operating effectiveness of the controls, we must have documentation of the controls to audit. Therefore, any review completed over the preparation of the financial statement or schedule of expenditure of federal awards should be documented in some way. Additionally, the oversight given to ensure compliance with requirements of the federal programs should be documented.

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SALES DISCLOSURE FEE AND FUND (IC 6-1.1-5.5)

A Buyer and Seller must file a Sales Disclosure Form with any conveyance document (Conveyance document is defined at IC 6-1.1-5.5-2). The Sales Disclosure Form is to be prescribed by the Department of Local Government Finance.

IC 6-1.1-5.5-4 requires a person filing a sales disclosure form shall pay a fee of ten dollars (\$10) to the County Auditor. A buyer and seller may agree to file jointly, and if so there will be only one sales disclosure form. If they don't agree, then a form must be filed by each party separately. Based on this it would appear that ten dollars (\$10) should be charged for each form filed, not each person filing. No charge is to be made if the transaction is Exempt from filing the Disclosure of Sales Information Form.

The finalized version of the prescribed form was not designed to incorporate a receipt, therefore you will need to account for these fees in the following manner:

1. The County Auditor must issue a receipt for each form filed. We would recommend the use of General Receipt Form No. 352 instead of issuing a quietus for each form filed. At the end of each business day one quietus would be written for the entire day's collection and posted in total to the Auditor's Fee Book County Form No. 1. (This will result in the funds ledger being posted daily and also fulfill the statutory requirements to deposit within the next business day. It also should cut down on the traffic between the treasurer and auditor's office since you will not be issuing a quietus for each form filed, which would require the person to go to the County Treasurer's office to complete the quietus transaction.)
2. Of the ten dollar (\$10) fee the county will retain fifty percent (50%), for deposit within the Sales Disclosure --County Share Fund # 1131 and the remaining fifty percent (50%), will be receipted to the Sales Disclosure – State Share Fund # 7105. The County Auditor will semi-annually forward to the Auditor of State the State Share.

The fiscal body of each county shall establish a Sales Disclosure Fund. Money in the Sales Disclosure Fund may be expanded only for: administration of this chapter, verification of the information contained on a sales disclosure form, training of assessing officials, or purchasing computer software or hardware for a property record system. The county fiscal body shall appropriate the money in the sales disclosure fund based on requests by assessing officials in the county.

CORONERS TRAINING AND CONTINUING EDUCATION FEE (IC 16-37-1-9)

This law establishes a nonreverting State Coroners Training and Continuing Education fund and requires that if the local department of health is charging a fee for a Certificate of Death [under IC 16-20-1-27(a)], a coroners education fee must be added to this rate. The local health department shall deposit this fee with the county auditor within thirty (30) days of collection. The county auditor is to transfer semiannually any coroners continuing education fees to the treasurer of state. The coroners continuing education fee is:

\$1.75 from July 1, 2007 through June 30, 2013
\$2.00 from July 1, 2013 through June 30, 2018
\$2.25 from July 1, 2018 through June 30, 2023
\$2.50 from July 1, 2023 through June 30, 2028
\$2.75 from July 1, 2028 through June 30, 2033
\$3.00 from July 1, 2033 through June 30, 2038
\$3.25 from July 1, 2038 through June 30, 2043
\$3.50 after June 30, 2043

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ENHANCED ACCESS FUND (IC 5-14-3-8.3)

If your unit has the process of enhanced access, then the fiscal body (County Council) must pass an ordinance establishing an "Enhanced Access Fund". The fund is to be administered by the public agency or officer designated by the ordinance or resolution. The fees that will be charged will be contractual fees. Contracts entered into must specify that the person will:

- (1) Pay the fee for enhanced access and
- (2) Not engage in unauthorized access, unauthorized alteration of records, or disclose any confidential public records.

Other fees to be deposited will include permitting a governmental entity to inspect public records by means of an electronic device. The public agency may charge a reasonable fee for the inspection of public records or the public agency may waive such a fee. This should be addressed in the creating ordinance. If the agency that collects funds utilizes a bank account for the deposit and remittance of fees, the funds collected would be reported on the report of collections and transferred to the auditor monthly. The agency that collects the fees should be issuing receipts for the funds collected. If the agency does not already have prescribed receipts, then general receipt form 352 should be utilized. The creating ordinance should specify the use of the fund as defined by statute. The enhanced access fund should be appropriated and expended for:

- (1) The replacement, improvement, and expansion of capital expenditures, and
- (2) The reimbursement of operating expenses incurred in providing enhanced access to public information.

The method for the payment of claims paid on the fund would be in the same manner as other county claims.

ELECTRONIC MAP GENERATION FUND (IC 5-14-3-8.5)

If your county provides an electronic map service, the fees charged will be deposited to an electronic map generation fund. The fund will have to be created by ordinance and will be administered by the public agency that collects the fees. The fees charged are to be based on the units reasonable percentage of their direct cost of maintaining, upgrading, and enhancing the electronic map and for the direct cost of supplying the electronic map in the form requested by the purchaser. The fee is subject to the approval of the fiscal body. The fee may be waived if the electronic map will be used for a noncommercial use such as identified under IC 5-14-3-8(k). If the public agency that collects the funds utilizes a bank account for the deposit and remittance of fees, the funds collected would be reported on the report of collections and transferred to the auditor monthly. The agency should be writing receipts for the funds collected. If the agency does not already have prescribed receipts, then general receipt form 352 should be utilized. The electronic map generation fund may be appropriated for the following purposes:

- (1) The maintenance, upgrading, and enhancement of the electronic map, and
- (2) The reimbursement of expenses incurred in supply the electronic pay in the form requested by the purchaser.

The method for the payment of claims paid on the fund would be in the same manner as other county claims.

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CLERK'S RECORD PERPETUATION FUND (IC 33-37-5-2)

Each county clerk will establish a clerk's record perpetuation fund. The fees to be deposited will be, the document storage fees, and the late payment fees authorized for deposit in this fund. This fund is to be appropriated and expended for the preservation of records and the improvement of record keeping systems and equipment. The method for the payment of claims paid on the perpetuation fund would be in the same manner as other county claims.

SALARY CONTRACTS FOR COUNTY SHERIFF'S (IC 36-2-13-2.5)

The sheriff, the executive, and the fiscal body **MAY** enter into a salary contract for the sheriff. If the county elects to enter into a contract with the sheriff per IC 36-2-13-2.5(b) the contract must contain:

1. A fixed amount of compensation for the sheriff in place of fee compensation.
2. Payment of the full amount of the sheriff's compensation from the county general fund in the manner that salaries of other county officials are paid.
3. Deposit by the sheriff of the sheriff's tax warrant collection fees (as described in IC 6-8.1-8-3) in the county general fund for use for any general fund purpose.
4. A procedure for financing prisoners' meals that uses one of the following methods:
 - (A) The county fiscal body (council) shall make an appropriation in the usual manner from the county general fund to the sheriff for feeding prisoners. The sheriff or the sheriff's officer's, deputies, or employees **MAY NOT** make a profit from the appropriation. The sheriff **SHALL** deposit all meal allowances received under IC 36-8-10-7 in the county general fund for any general fund purpose, or
 - (B) The sheriff shall pay for feeding prisoners from meal allowances received under IC 36-8-10-7. The sheriff or the sheriff's officers, deputies, or employees **MAY NOT** make a profit from the meal allowances. After the expenses of feeding prisoners are paid, the sheriff shall deposit any unspent meal allowance money in the county general fund for use for any general fund purpose.
5. A requirement that the sheriff **SHALL** file an accounting of expenditures for feeding prisoners with the county auditor on the first Monday of January and the first Monday of July of each year.
6. An expiration date that is not later than the date than the term of the sheriff expires.
7. Other provisions concerning the sheriff's compensation to which the sheriff, the county executive, and the fiscal body agrees.

The salary contract must be a written document containing the above provisions. It must be approved by resolution of both the executive and the fiscal body and signed by the sheriff.

COUNTY SURVEYOR'S CORNER PERPETUATION FUND

IC 36-2-7-10(a)(7) requires \$5 for each deed the recorder records, in addition to other fees for deeds, be charged for the county surveyor's corner perpetuation fund. Per IC 36-2-19-6 the filing fee established under IC 36-2-19-4 and the penalty for the violation of an ordinance established under IC 36-2-12-13 and IC 21-47-3-4 shall also be deposited in this fund.

The money collected under these statutes must be appropriated in the regular manner, and must be used by the county surveyor for expenses incurred in the location and perpetuation of the original government survey corners as found under IC 36-2-12-11 and for geodetic activities under IC 21-47-3-3.

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SURVEYOR'S COMPENSATION

IC 36-2-12-15 states:

- “(a) If the surveyor serves as highway supervisor or county highway engineer and is compensated for that service in an amount greater than the compensation fixed under the title, then that compensation is in lieu of the compensation fixed under this title.
- (b) When fixing the compensation of county officers under this title, the county fiscal body shall fix:
 - (1) compensation for the surveyor as if he is registered under IC 25-21.5 or IC 25-31; and
 - (2) compensation for the surveyor as if he is not registered under IC 25-21.5 or IC 25-31.

The compensation fixed under subdivision (1) must be one and one-half (1 ½) times that fixed under subdivision (2). The county fiscal body shall then determine whether or not the surveyor is registered under IC 25-21.5 or IC 25-31 and shall fix his compensation in the proper amount.

(c) In addition to the compensation fixed under subsection (b), if the surveyor described and certifies the number of miles of active regulated drains in the county to the county executive, he is entitled, with the approval of the county executive to:

- (1) two dollars (\$2) per mile for each mile described and certified, if he is not registered under IC 25-21.5 or IC 25-31; or
- (2) four dollars (\$4) per mile for each mile described and certified, if he is registered under IC 25-21.5 or IC 25-31.

- (d) In addition to the compensation fixed under subsections (b) and (c), the surveyor is entitled to:
- (1) two dollars (\$2) for each corner reference required under section 11 of this chapter, if he is not registered under IC 25-21.5 or IC 25-31; or
 - (2) four dollars (\$4) for each corner reference required under section 11, if he is registered under IC 25-21.5 or IC 25-31.

RECORD OF HOURS WORKED

IC 5-11-9-4 provides that records be maintained showing which hours were worked each day by officers and employees of the county.

This requirement can be met by preparing an endorsement on the payroll claim form showing the general work schedule and listing the specific employees who worked hours different from that general work schedule. Each elected officer or head of each department would be responsible for preparing such endorsement on the payroll claim for their office or department.

If an employee is employed by more than one (1) public agency or in more than one (1) position within that public agency, it is also essential that an accurate record of hours worked be maintained. In these instances we recommend that each department records reflect hours worked in both positions.

PROPERTY REASSESSMENT FUND INVESTMENTS

The county treasurer shall as provided by IC 6-1.1-4-28.5 invest any money accumulated in the property reassessment fund until the money is needed to pay reassessment expenses. Any interest received from the investment of this money shall be receipted into the property reassessment fund not to the county general fund.

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COMPENSATION – ANNUAL SALARIES – PROPER PAYMENTS

Indiana statutes require salary ordinances to be enacted annually for all elected and appointed county officials and employees. Historically, even dollar amounts such as \$20,000 are set as an annual salary for an employee. With a bi-weekly payroll period established for the unit, it becomes difficult to pay an employee the exact amount of his/her annual salary since twenty-six payrolls (in some years there are twenty-seven) will not divide evenly. Unless an odd amount is paid for the last payroll period, the employee is either over or under paid the amount established in the salary ordinance causing either an unhappy employee or an unhappy local fiscal officer.

It is suggested for salary ordinances enacted in 2003 and all future periods, the employee salaries be established to coincide with the customary work and pay period. (For example, instead of \$20,000 annually, adopt \$385.00 weekly or \$770.00 bi-weekly.) By using this method it will make no difference if there are 52 or 53 weekly pays or 26 or 27 bi-weekly pays.

When using this suggestion and preparing your budget, it will be imperative the proper number of pays be computed in order to not under-estimate the next year's requirements for personal services and associated fringe benefits. Keep in mind that the salary ordinance and the budget ordinance are two different statutory requirements. You should not attempt to combine the ordinances.

QUESTIONS AND ANSWERS FROM COUNTY AUDITORS SPRING CONFERENCE

Question #1: Will Auditor of State, Tim Berry's and Andrew Berger's presentations be available in PDF form?

Answer #1: Yes, we have posted both to the State Board of Accounts website.

Question #2: Under SEA 517 it states \$50.00 for not showing up for appeal cannot go on the tax bill. Our assessor doesn't collect fees –what is the procedure? Do we set up a report of collections for the assessor's office and then what fund do I receipt it into?

Answer #2: This was discussed with the assessors association. They will need prescribed forms for collection of fees including the general receipt, cashbook, and report of collections form. Monies collected for these penalties should be put into the county general fund.

Question #3: Since it is possible for a tax payer that has filed an appeal to pay the taxes associated with the assessed value of the previous year with no penalty, how do you suggest this be handled in the auditor's office or how are other counties handling this? Especially if you are a county that has an extremely large amount of appeals and some are not settled for two(2) or three(3) years.

Answer #3: There is guidance in the Accounting and Uniform Compliance Guidelines Manual for County Auditors, Chapter 9, Pages 16 and 17. You actually use a separate duplicate for those properties under appeal. The process in the manual is still correct. However, the law on interest in IC 6-1.1-37-9 was changed in both the 2012 and 2013 sessions of the General Assembly so the rate quoted in the manual is incorrect.

Question #4: State Transferring Property. Can you clear up I.C. 8-23-7-31? The code states: The description shall be recorded in the deed records of the county. No fee may be charged for filing and recording the description. The department shall also file the description with the county auditor. We make the deed go through the auditor's office so we can do the split and have been charging the state the \$5.00 per parcel transfer fee, is this ok or should we not be charging?

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QUESTIONS AND ANSWERS FROM COUNTY AUDITORS SPRING CONFERENCE (Continued)

Answer #4: IC 8-23-7-31 states: Whenever the Department of Transportation acquires real property, rights, or easements for the construction, repair, and maintenance of a state highway, a legal description of all rights-of-way and easements, including the area of the land acquired, shall be filed by the department in the office of the recorder in the county in which the real property is located. The description shall be recorded in the deed records of the county. No fee may be charged for filing and recording the description. The department shall also file the description with the county auditor. This statute does not make clear whether the filing in the county auditor's office is a filing that is free or not. Therefore, you should direct any questions you have to the contact person at the Indiana Department of Transportation, Real Estate Division or their liaison at the Attorney General's office for guidance on the application of the transfer fee required by local ordinance and IC 36-2-9-18.

Question #5: Title IV-D Incentive Funds: Is an appropriation required for paying IV-D eligible part-time salaries (and associated fringe benefits) from any of the six Title IV-D Incentive Funds? Does SBOA recommend an appropriation? What policies do other counties follow relating to part-time wages and IV-D Incentive Funds? Is an amendment required/recommended to the salary ordinance?

Answer #5: IC 31-25-4-23 allows the Title IV-D incentive funds to be placed into the budgets of Prosecuting Attorneys and Clerks. The Title IV-D Incentive fund may also be disbursed without appropriation. State Board of Accounts does not recommend appropriation. We are not aware of any county policies related to part-time wages and IV-D incentive funds that are common practice. County policy would not be able to be contrary to Indiana Code or the program requirements. Amendment of the salary ordinance is also not required or recommended for Title IV-D compensation that is paid to employees that as long as it is not paid to the elected official.

Question #6: IC 32-17-14-26 & IC 36-2-11-14 state an affidavit of transfer must be endorsed by the auditor with the taxation file stamp before recording, which include death affidavits. If our county recorder is accepting and recording death affidavits without the auditor stamp does this violate statute?

Answer #6: IC 32-17-14-11(i) added April 30, 2011 clarifies that endorsement by the auditor is not necessary for the transfer on death deed to be recorded because property is not being conveyed until a later event. The affidavit to transfer filed at the time of death is the conveyance document. This needs to be endorsed by the county auditor for the required transfer (endorsement) fee.

Question #7: Is there a 10% late payment penalty on the 10% civil penalty? Is this penalty distributed to the taxing units?

Answer #7: Yes, the civil penalty is part of the tax liability IC 6-1.1-12-37(F); therefore, it would be eligible for the late payment penalty that is ultimately distributed to the taxing units.

Question #8: Sometimes a taxpayer ignores letters and notices requesting documentation for verifying their homestead deduction, but then comes forward with the document after their mortgage company has paid the ineligible homestead lien. In such cases, a refund is indicated. Under SEA 517, the amount collected for the Ineligible Homestead may be deposited into a county's general fund, so under such circumstances, would a refund be paid from the general fund by County Council appropriation?

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QUESTIONS AND ANSWERS FROM COUNTY AUDITORS SPRING CONFERENCE (Continued)

Answer #8: The refund should be paid from the Ineligible Deduction Fund. The money that goes into the general fund is a calculation when applicable of only the excess collections. We see nothing with the change in statute that would change the refund process.

Question #9: Can we still go 3 years back tax on ineligible homesteads? If so, would it be pay years 10, 11, 12 or is it different because May 10, 2013 has already passed? Would it only be fall of pay year 2010?

Answer #9: You may review back 3 years (meaning 6 installments) when you are working on documenting that a person is not eligible for the standard deduction or homestead deduction. This is additional work than just knowing that the person failed to file a pink form. Today, 6 installments would be Pay Spring 13, all of Pay 2012, all of Pay 2011, and Pay Fall 2010.

Question #10: Refunds of ineligible deductions back taxes and civil penalty. Now that \$100,000 cap on receipts deposited.

If the county treasurer submits a C of E to remove taxes because a taxpayer claimed to not have received an amended fall statement can the auditor disregard the C of E? In my opinion only the penalties might have been removable –never the taxes.

Answer #10: County Treasurers cannot enter corrections of errors. They should not really be submitting them. This is a major weakness in internal controls. The correction of error is the Auditor's document. The County Auditor and in some cases the DLGF must approve or an Assessor must agree with the correction of error in order for it to be posted. Take a look at IC 6-1.1-15-12.

Question #11: Can you give employees a "one time" bonus out of the auditor's ineligible deduction fund? If so, is that money subject to PERF?

Answer #11: Yes, but it must be part of the salary ordinance as provided under IC 36-2-5-11. In order to determine the amount subject to INPRS retirement plans you must review the plan. Each county plan can be different.

Question #12: Can the recorder waive the recording fee to release liens on property sold at commissioner's sale?

Answer #12: IC 36-2-7-10 does not have a provision for the recorder to not charge or waive a fee for releasing liens on property sold at commissioner's sale. The majority of these liens should be municipal liens or liens of special districts that would have included the release fee within the amount certified for collection, which the unit did not receive. I can understand why they would not be happy to release the lien and pay the recording fee but I don't see a way to avoid the fee.

Question #13: Our State Board Auditors have told us that we need to have it documented in the commissioner's minutes that the auditor and treasurer are in balance with their financial records. How do we word this? Is there a form to complete? What does SBOA want?

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QUESTIONS AND ANSWERS FROM COUNTY AUDITORS SPRING CONFERENCE (Continued)

Answer #13: There is no statutory requirement, Uniform Compliance Guideline, or audit position that a statement to that effect be recorded in the commissioner's minutes when the auditor and treasurer are in balance. We will take this issue back for further training with our staff. Whenever you have confusion about an issue like this your field examiner or supervisor should be able to point to the authority for anything they say you are required to do. Please never hesitate to ask them for this authority so that you can obtain a complete understanding of your responsibilities. It is possible there is a misunderstanding. They might have been providing a suggestion for an internal control that they thought might help a situation and said it in a way that could be misconstrued.

Question #14: I have a council member who wants the minutes prior to the meeting. He makes changes to my original stating my perceptions are different from his. He then copies his to the ledger paper for the Councils approval during the meeting. I prefer not to mention names but I need ideas of how to stop this. Am I required to take the minutes or can someone else do it? Is there a law I can print in order to prove he does not retain the right to change mine?

Answer #14: IC 36-2-3-6(b) states: "The county auditor is the clerk of the fiscal body and shall; 1) preserve the fiscal body's records in his office; 2) keep an accurate record of the fiscal body's proceedings; 3) record the yays and nays on each vote appropriating money or fixing levy; 4) record the yays and nays on other votes when requested to do so by two or more members." So in order to maintain accurate records you might change the method you use for recording or as part of internal control process circulate minutes as quickly as possible after meeting to all members for approval and institute procedures for making corrections by any member.

Question #15: In the memoranda for an executive session of the commissioners, Karen Arland said we should list attendees of the session. Is that all present or just commissioners, auditor, and county attorney? For example in an executive session that addresses job performance, is the name of the employee present at the executive session to be included in the memoranda, or only the name of the commissioners present, etc.?

Answer #15: IC 5-14-1.5-6.1(d) The requirements stated in this subsection for the memoranda and minutes being made available to the public is modified as to executive sessions in that the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated instance in the law for which public notice was given. In regard to recording those present it states the members of the governing body (Commissioners) recorded as either present or absent.

Question #16: Are ineligible tax and civil penalty charges considered delinquent for purpose of Sheriff sale if the first due date has not passed?

Answer #16: No

QUESTIONS AND ANSWERS FROM COUNTY RECORDERS ANNUAL CONFERENCE

Question #1: Is there a statute that says that the recorder's salary and/or the first deputy's salary should come out of the General Fund?

Answer #1: No, there are other funds such as the rainy day fund that may be used. However, the purpose of the general fund is for the general operation of the counties. Other funds have specific purposes and may only be used for those purposes.

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QUESTIONS AND ANSWERS FROM COUNTY RECORDERS ANNUAL CONFERENCE (Continued)

Question #2: Do certificates of ordainment have to be recorded for someone to perform a wedding in our county?

Answer #2: Per IC 31-11-6-1 Marriages may be solemnized by any of the following: 1) A member of the clergy of a religious organization, such as a minister of the gospel, a priest, a bishop, rabbi, etc., but does not mention that recording of certification is required and we cannot find in statute where to be a member of the clergy that you have to record your ordination.

Question #3: A mortgage was recorded in 2003, as Andrew D. Smith; correctly. A release was then recorded in 2009 cross referencing that mortgage but listing Andrew B. Smith. This was recorded in error. At this point what is our office's responsibility?

Answer #3: Our position is that Recorders have no responsibility for the validity of the document if they have performed the recorder's duties by law as required

Question #4: Can a merger document transfer property?

Answer #4: IC 32-21-1-13 states: "Except to a bona fide lease for a term not exceeding 3 years a conveyance of land or any interest in land shall be made by a deed that is 1) written and 2) subscribed, sealed and acknowledged by the grantor or by the grantor's attorney."

Question #5: Is there a law that states that a deed can only be prepared by an attorney or the property owner? If so, can a deed be rejected for recording if the prepared buy is not an attorney or the grantor?

Answer #5: We are not aware of a statute that requires the deed be prepared by an attorney or the property owner.

Question #6: Regarding IC 32-28-4 and Recorders releasing liens after 20 years. First, I would be very uncomfortable releasing a lien. Second, who would prepare the legal document for a Recorder to sign?

Answer #6: It is statutory that a mortgage or vender's lien expires after the lapse of a certain time period and the statute specifies how that determination is made including the evidence the recorder must use to certify. .

Question #7: Please provide an explanation of copy fee that is obtained from enhanced access verses bulk copy fee.

Answer #7: Per IC 5-14-3-2(e) "Enhanced access" means the inspection of a public record by a person other than a governmental entity and that:
(1) is by means of an electronic device other than an electronic device provided by a public agency in the office of the public agency; or
(2) requires the compilation or creation of a list or report that does not result in the permanent electronic storage of the information.

The fee charged would be set per ordinance and should be reasonable

Per IC 36-2-7-10.1 Bulk Copy means

1. Duplicating electronically stored data onto a disk, tape, drum, or any other medium of electronic storage or
2. Reproducing microfilm

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QUESTIONS AND ANSWERS FROM COUNTY RECORDERS ANNUAL CONFERENCE (Continued)

Of

1. All recorded documents received by the recorder for recording in a calendar day, week, month, or years;
2. The indices for finding retrieving and viewing all recorded documents received in a calendar day, week, month or year. Or both 1 and 2.

The fee is 7 cents per page for a recorded document, including the index of the instrument number or book and page or both for retrieving the recorded document and 7 cents per recorded document for a copy of the other indices used by the county recorder for finding, retrieving, and viewing a recorded document.

Exceptions to this fee may be found under IC 36-2-7-10.1 (h).

Question #8: Public Records – When prisoners request records they indicate they should not have to pay. Is there a statute to reference in their denial letter?

Answer #8: IC 36-2-7-10 requires that the recorder shall tax and collect the fees prescribed by this section for recording, filing, copying, and other services the recorder renders.

Question #9: Do drainage easements from the State fall under the IC code to make the recording free?

Answer #9: Drainage easements related to a state highway project under IC 8-23-7/IC 8-23-23 are to be recorded for free.

Question #10: What information is required to be posted in the recorder's office?

Answer #10: IC 36-2-7-10 requires you to post the fees set forth in IC 36-2-7-10(b) in a prominent place within the recorder's office.

Question #11: Upon the recording of a mortgage release, is it the responsibility of the recorder to verify that the names on the release are the same that are on the mortgage? If so, what is the code?

Answer #11: We did not find a code that requires recorders to review names on the documents and attest to their correctness.

Question #12: Auditors transfer book shows deed as being transferred. Indexing is available in recorder's office. The image scanned is someone else's document (a release). The grantee is requesting a copy of the deed that was not received back. As the recorder, can we have our county attorney prepare a statement or affidavit to show that a transfer and deed did exist? Who signs the document?

Answer #12: This seems to indicate a mistake (s) on the county's part. Do your due diligence to attempt to find the proper document or copy. Also, speak to the county auditor and county attorney to see what the county can do legally, to remedy this situation.

Question #13: Is laminating documents considered an approved preservation method?

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QUESTIONS AND ANSWERS FROM COUNTY RECORDERS ANNUAL CONFERENCE (Continued)

Answer #13: ICPR Website – Guide to Preservation and Destruction of Local Government Public Records. States: “Do Not Laminate Any Records or Record Volumes”

Question #14: Assumed Business Name – Should there be one form for all Recorder’s, does it need to be notarized, or just acknowledged by recorder? If the recorder acknowledges, are they liable?

Answer #14: Not required by IC 23-15, Although, a notary public is one way to acknowledge a document, IC 23-15 and IC 36-2-11 do not appear to require acknowledgment. Acknowledgments are covered in the IC Title on Real Property. Specifically, IC 32-21-2-3 states that: For a conveyance, a mortgage, or an instrument of writing to be recorded, it must be: (1) acknowledged by the grantor; or proved before a : judge, clerk of a court of record, county auditor, county recorder, notary public, mayor of a city in Indiana or another state, commissioner appointed in another state by the Governor of Indiana, Minister, charge d’affaires, or counsel of U.S. in another country, clerk of Marion County City County Council, City Clerk in 2nd class City, Clerk-Treasurer of 3rd Class City, Clerk Treasurer of a Town or person authorized under IC 2-3-4-1, So they are to prove document to you.

Question #15: Liens – What liens do Recorder’s mail to debtor?

Answer #15: Mechanics Liens on Real Estate per IC 32-28-3-3. Other liens are handled in the same manner: Railroads; Real Estate Land Surveyors and Architects; Employee’s Liens; Motor Vehicles (Airplanes); Liveryman’s Liens’ Assessment Liens; and Mechanic’s and Tradesman Liens. Check the statute as this may not be complete.

Question #16: Some documents are submitted for recording with only the Notary Signature, Expiration Date and Notary Seal. Can a document be rejected if it does not have the full Notary Public Statement? Personally appeared before me name.

Answer #16: IC 33-42-2-9 requires a notary public to affix the notary’s name, expiration date and notary seal. The notary shall print or type the name below signature unless the name appears in printed form in the document or as part of the notary’s stamp in a form that is legible, and indicate the county of residence.

Our position is that since the county recorder does not testify as to the validity of any Instrument for recording a recorder should not refuse to accept instruments even though an element required of the notary is not shown on the document.