



# Guide to Indiana County Government

2009 Edition

**A PUBLICATION OF ASSOCIATION OF INDIANA COUNTIES, INC**

101 West Ohio Street, Suite 1575  
Indianapolis, IN 46204  
Phone (317) 684-3710 ♦ Fax (317) 684-3713  
[www.indianacounties.org](http://www.indianacounties.org)

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# Chapter 1

## INTRODUCTION

This book will provide newly elected county officials, as well as other interested parties, important and timely information on various aspects of county government in Indiana.

Counties trace their roots to the English shire of a thousand years ago. Serving a dual function, the shire acted as the administrative arm of the national government as well as the citizen's local government. The structural form of the shire was adopted along the eastern seaboard of North America by the colonists and adapted to suit the diverse economic and geographic need of each of the colonies.

When our national government was formed, the framers of the constitution did not provide for local governments. Rather, they left the matters to the states. Subsequently, early state constitutions generally conceptualized county government as an arm of the state.

After World War I, population growth, and suburban development, the government reform movement strengthened the role of local governments. Those developments set the stage for post World War II urbanization. Changes in structure, greater autonomy from the states, rising revenues and stronger political accountability ushered in a new era for county government. The counties began providing an ever widening range of services.

Today, county government impacts public safety, health, planning and zoning, the road

system, judicial system and many other aspects that affect how we live our lives.

But how much do you really know about county government? What are the various responsibilities of county office holders? What statutorily established laws have been created to allow county officials to carry out their duties? This handbook will answer some of those questions.

The purpose of this handbook is to provide basic information that will be useful in better understanding county government. It contains chapters on the following topics:

- A brief description of Indiana county government.
- The legal status of county officials.
- The respective roles and responsibilities of county officeholders.
- A general summary of county finances, including revenue sources and budgeting techniques.
- An overview of meeting and public records requirements.
- Information on how the Association of Indiana Counties can be a valuable resource

In addition to providing information on the duties of county government, this publication will provide a brief overview of the services of the Association of Indiana

Counties, a nonprofit organization that was established in 1957 for the betterment of county government. The various functions of the AIC include lobbying the Indiana General Assembly on behalf of counties, serving as liaison between counties, state and federal agencies, and providing technical assistance and training to county officials and employees. Chapter Seven of this guide provides more information on the services the AIC can provide. For further information contact any of the AIC Staff listed below:

**David Bottorff**, *Executive Director*

dbottorff@indianacounties.org

**Andrew Berger**, *Legislative Director*

aberger@indianacounties.org

**Sarah Nichols Rossier**, *Deputy Legislative Director*, srossier@indianacounties.org

**Cisma Ferguson**, *Director of Administration & Financial Affairs*

cferguson@indianacounties.org

**Shawna Schwegman**, *Director of Education & Planning*,

sschwegman@indianacounties.org

**Karen Avery**, *Director of Communications*

kavery@indianacounties.org

**Jess Clouse**, *Executive Office Coordinator*

jclouse@indianacounties.org

# Chapter 2

## THE POWER OF INDIANA COUNTIES

### Sources of Authority

Article 6 of the Indiana Constitution contains most of the constitutional references to county government. It specifies the county offices that are mandated by the Constitution, as well as the terms of office, and the constitutional qualifications for all county officers. Constitutional requirements are very general.

The Constitution leaves the details of county offices to the General Assembly. Article 6, Section 2, creates specific county offices. Article 6, Section 3 gives the General Assembly discretion to create such other county or township offices as are necessary and the authority to specify the manner of election or appointment. Under Article 6, Section 8, the impeachment and methods of filling vacancies in county offices are matters left to the discretion of the General Assembly. Finally, Section 10 of Article 6 states, "the General Assembly may confer upon the boards doing county business in the several counties, powers of a local administrative character." While the Constitution denies certain powers to counties, there is only one power conferred upon counties by the Constitution. Article 9, Section 3, states, "the county boards shall have power to provide farms, as an asylum for those persons, who, by reason of age, infirmity, or other misfortune, have claims upon the sympathies and aid of society."

Because the Constitution devotes little attention to county government, most of the

powers of county government and the responsibilities of county officials are found in specific statutes and the "home rule" statute.

### Home Rule

Traditionally, courts view local units of government as extensions of the state and subject exclusively to the will of the General Assembly. This traditional concept is sometimes referred to as "Dillon's Rule." Generally, Dillon's Rule holds that a local unit of government has only the power expressly granted to it by the Indiana Constitution or the General Assembly and powers that are necessarily or fairly implied by the explicit powers. Prior to the adoption of "home rule" in Indiana in 1980 {IC 36-1-3}, Indiana courts applied Dillon's Rule to Indiana counties. Unless a local unit of government could point to a specific statute or could prove that the power was absolutely necessary in order to carry out an expressed authority, the court would rule that the power did not exist. Local units of government, including counties, were entirely dependent on the actions of the General Assembly for their authority.

As the responsibilities of local government expanded and the laws governing them became more extensive and complex, it became apparent that local governments needed some degree of flexibility and autonomy. The General Assembly drafted the home rule statute to meet the diversity of needs of local governments. It granted to them any powers "...not expressly denied by

the Indiana Constitution or a statute, or granted to another entity." {IC 36-1-3-5(a)} Home rule reversed the presumption of Dillon's Rule as well as previous judicial decisions limiting the power of local governments. It meant that a lack of specific authorization should be interpreted, not as an implied prohibition of power, but as an implied authorization of power. Under IC 36-1-3-3, "Any doubt as to the existence of a power of a unit shall be resolved in favor of its existence." In addition to the powers granted under a specific statute, home rule gives a county, city, or town, "all other powers necessary or desirable in the conduct of its affairs, even though not granted by statute." {IC 36-1-3-4}

The General Assembly has chosen to prescribe the method for exercising some of these express powers. Under IC 36-1-3-6, when there is a constitutional or statutory provision requiring a specific manner of exercising a power, the unit must apply that power in the manner specified by the Constitution or the General Assembly. However, when the statute does not state a specific method for exercising a power, a unit has discretion to adopt its own method for exercising the power.

With the number of statutes pertaining to the powers of county government, the task of determining a county's powers in a given instance can be confusing. Generally, the following applies:

- If the constitution or state law expressly denies the power to the county or if there is specific grant of the power to another unit of government the county has no authority to exercise the power.
- If the power is within the exclusive jurisdiction of the state or if the action is contrary to or duplicates, alters, or

extends a state law, the county is precluded from exercising the power.

- If there is a specific statutory provision prescribing the proper manner of exercising the power, the county must exercise the power in that manner.
- If the power is necessary or desirable in the conduct of the county's affairs and none of the above applies, then the county may exercise the power in any manner that the law does not prohibit.

Because a county may exercise a general power in a variety of ways, it is good practice to adopt an ordinance authorizing and defining the exercise of the power and the procedures for implementing it. The involvement of the county attorney at this stage of the process can help to avoid future lawsuits.



# Chapter 3

## THE LEGAL STATUS OF COUNTY OFFICIALS

This chapter concerns the legal status of all county officials. It covers some of the major provisions that generally apply to elected county officials. Chapter 4 reviews the specific responsibilities for each of the elected offices.

### **Becoming an Elected Official**

#### *Who is Elected*

The law establishes the elected offices within county government. According to the Indiana Constitution, Article 6, Section 2, the following officers "...shall be elected...a Clerk of the Circuit Court, Auditor, Recorder, Treasurer, Sheriff, Coroner, and Surveyor." The offices of county council, board of county commissioners, and county assessor, however, are not constitutional offices. The General Assembly created these offices by statute.

Article 7 of the Constitution provides for the election of a prosecuting attorney and a judge of the circuit court. Statutes provide for the election of superior and county court judges in many counties. These officers are actually officials of a judicial circuit or district, which may sometimes include more than one county.

#### *Terms of Office*

All county officials are elected for a four-year term of office. Except for the surveyor and judicial officers, constitutional county

officers are limited to two terms or eight years of service in a period of twelve years. {Article 6, Section 2 of the Indiana Constitution} There is no limitation on the number of terms a statutory county officer can serve. Circuit, superior and county court judges are elected to six-year terms, and the prosecutor is elected to a four-year term.

#### *Qualifications for Office*

Article 6, Section 4 of the Indiana Constitution details the legal requirements for holding office that apply to all constitutional county officers. Article 6, Section 4 states, "No person shall be elected, or appointed, as a county officer, who shall not be an elector of the county; nor anyone who shall not have been an inhabitant thereof, during one year next preceding his appointment..." This requirement applies to all county offices; not just those created by the Constitution. In addition to the constitutional one year residency requirement, a county commissioner {IC 3-8-1-21} or a councilperson {IC 3-8-1-22} elected from a specific district must reside in the district for at least six months prior to the election. By statute, county assessors must complete certain classes to maintain their office. Starting in 2010, county assessors must have obtained a Level II certification from the State of Indiana to run for the office.

#### *Official Bonds*

To protect the county from liability and to safeguard the integrity of public funds, state

law requires that county officers pledge to reimburse the county against costs or other losses occasioned by wrongful or negligent actions. This requirement is known as "giving bond." The county typically purchases surety bond insurance covering the "faithful performance" of the duties of the respective office. The county is responsible for paying the insurance premiums. Under IC 5-4-1-9, a county officer must obtain the bond before the commencement of the officer's term.

Under IC 5-4-1-18, the county auditor, treasurer, recorder, surveyor, sheriff, coroner, assessor and clerk must file an individual surety bond. However, the county council, by ordinance, may authorize a blanket bond or crime insurance policy to cover all employees, commission members and persons acting on behalf of the county. {IC 5-4-1-18(b)}

The county council may designate the actual amount of the individual bond for each official, subject to certain statutory requirements. The bond for the county treasurer and sheriff must equal \$15,000 for each \$1,000,000 of receipts of the office for the past year, but it may not be less than \$15,000 nor more than \$300,000. The minimum amount of the bond for the auditor is \$15,000 and for all other officers is \$8,500. {IC 5-4-1-18}

Before filing a bond, another elected official must approve its sufficiency. Specifically, the auditor must approve the assessor's bond, the clerk must approve the surveyor's and the prosecuting attorney's bond and the board of county commissioners must approve the bond for all other county officials. After approval, all officials file their bonds with the county recorder, except for the recorder, who files his or her bond, with the county clerk.

The county council may require other officials acting on behalf of the county, such as deputies, employees and appointees, to obtain a bond.

### ***Oath of Office***

The Indiana Constitution {Article 15, Section 4} and state law require all officers to take a prescribed oath prior to assuming their duties. Any official who has the power to administer oaths may administer the oath. In practice, although it is not a requirement, most county level officials give their oath before either the county clerk or a judge of one of the county-level courts.

The officer swears or attests to the oath on the officer's commission or certificate of election. Oaths are filed with the County Clerk. For County Commissioners, Assessors, and Council members, failure to deposit a copy of the oath may result in vacating the office. {IC 5-4-1}

### ***Holding Dual Offices***

Article 2, Section 9, of the Indiana Constitution prohibits government officials from holding "two lucrative offices" at the same time. This prohibits an elected or appointed official from serving in two offices if both offices provide compensation for service, which includes payments of per diem. The amount of compensation paid does not determine whether a position is lucrative. A court has even determined that a \$3 per diem for attending a council meeting makes a city council seat a lucrative office. A person holding a lucrative office who accepts a second lucrative office automatically forfeits the first office. To come within the constitutional prohibition against holding two lucrative offices, a person must hold an office in which he or she is authorized to exercise some portion of the state's authority for the benefit of the

public, be entitled to compensation for those services, and also hold office under the general laws of the state as contrasted with an office that is a creation of the county. Throughout the years, the courts have issued numerous decisions interpreting this provision of the Constitution. Because the lines of distinction drawn by the courts are not always clear, it is important to consult legal counsel when these issues arise. The Attorney General's Dual Office Holding Guide is an excellent resource on the issue of dual lucrative offices and can be found on the web at [http://www.in.gov/attorneygeneral/legal/advicory/dual\\_office.html](http://www.in.gov/attorneygeneral/legal/advicory/dual_office.html)

### ***Compensation***

The county council sets salaries at its annual budget meeting after considering the recommendation of the board of county commissioners. {IC 36-2-5-11(c)} At the July meeting the board of county commissioners must review the recommendations of each of the departments and submit its recommendations to the county council before August 20. {IC 36-2-5-4} The amount of annual compensation for elected county officials, as fixed by the salary ordinance, may not be changed during the year. An exception has been made to give the council the ability to change the salary of a newly elected county official after the person has taken office. The council can change the salary in this case if it has been requested by the newly elected official. Through a majority vote, the council may change the compensation or number of other county officers, deputies and employees at any time at the request of the affected officer or head of a department, commission or agency. {IC 36-2-5-13}.

The minimum salary of judges, prosecuting attorneys, court officers and deputy prosecutors are set by statute. However, the

county council may elect to pay these officers more than the minimum statutory amount. The maximum additional amount for a judge and a full-time county prosecutor is \$5,000 per calendar year. {IC 36-2-5-14} The salaries fixed by statute and by the salary ordinance are full compensation for a county officer's services and are in lieu of all other fees, per diems, penalties, costs, interest, forfeitures, percentages, commissions, and other remuneration. {IC 36-2-7-2} There are a few exceptions to this rule, including mileage allowances, sheriffs' tax warrant fees, commissioners' drainage board per diems, etc. In general, the county fiscal body determines the mileage allowance paid to county officials and their employees when they are authorized to use their personal vehicle in the performance of county work. {IC 36-2-7}

### ***Vacancies in Office***

A vacancy exists, according to state law and the Indiana Constitution, when any of the following instances occur: death; resignation and lawful acceptance thereof; removal from office for incapacity, conviction of a felony, official misconduct, malfeasance, or nonfeasance; a decision of a court declaring the election or appointment void or loss of eligibility for office, i.e., change of residence.

The Governor is responsible for filling vacancies that occur in the offices of the prosecuting attorney and judge. All other offices are filled in accordance with state election law. IC 3-13-7, provides for the filling of a vacancy by a caucus of precinct committee persons of the party from which the official was elected. In the case of a council member or commissioner elected only by voters within a particular district, the caucus is limited to the precincts within that district. The caucus must convene

within 30 days following the occurrence of the vacancy.

IC 3-13-7, also provides a procedure for filling a vacancy in an office held by a person not affiliated with a political party or in an office held by a person affiliated with a political party that does not have a precinct committee person. If the vacancy occurs on the county council, the county council fills the vacancy. If the vacancy occurs in the office of the county commissioner, assessor, sheriff, auditor, recorder, surveyor, treasurer, or coroner, the board of county commissioners fills the vacancy.

## **Official Misconduct and Conflict of Interest**

### ***Official Misconduct***

"Official misconduct" is defined in IC 35-44-1-2 and applies to all public officials and their employees. A public official who does any of the following commits official misconduct:

- Knowingly or intentionally performs an act that he or she is forbidden by law to perform.
- Performs an act he or she is not authorized by law to perform, with intent to obtain any property for himself or herself.
- Knowingly or intentionally solicits, accepts or agrees to accept from his or her appointee or employee any property other than what he or she is authorized by law to accept as a condition of continued employment.
- Knowingly or intentionally acquires, or divests himself or herself of, a monetary interest in any property, transaction, or

enterprise, or aids another person to do so based on confidential information obtained by virtue of his or her office.

- Knowingly or intentionally fails to deliver public records and property to his or her successor in office.

A violation of the official misconduct law is a Class A misdemeanor, subject to criminal penalties as well as possible proceedings for removal from office.

Two other criminal offenses defined in IC 35-44 are also official misconduct, namely bribery and ghost employment. Under IC 35-44-1-1, the term bribery is defined as offering, soliciting or accepting of money or other things of value as a condition of official action. One commits "ghost employment" if he or she hires a county employee and does not assign the employee any duties or assigns the employee duties that are unrelated to the duties of the county office, such as political campaign work. Both bribery and ghost employment are felony offenses.

### ***Conflict of Interest***

Conflict of interest is a Class D felony punishable by a maximum prison term of three years and a maximum fine of \$10,000. A public servant commits the crime of conflict of interest if the public servant, or the dependent of a public servant, knowingly or intentionally derives a profit from or has a monetary interest in a public contract or purchase. However, it is a defense to the charge of conflict of interest if the public servant's total pecuniary interest in the contract or purchase and all other contracts and purchases made by the county during the 12-month period prior to the contract or purchase is \$250 or less. {IC 35-44-1-3}

A public servant includes anyone elected, appointed or employed to discharge a public duty. The statute does not deal with conflicts of interest that are not pecuniary in nature. {IC 35-44-1-3}

A public servant is not prohibited from having a pecuniary interest in or deriving a profit from a contract or purchase connected with the county:

If the public servant:

- is not a member of or on the staff of the governing body empowered to contract or purchase on behalf of the governmental entity;
- does not have job duties related to the contract or purchase; and
- files a statement of disclosure; or

If the public servant:

- is elected or is appointed by an elected official; and
- files a statement of disclosure.

A county commissioner and other board members fall under the second category of public servants above. While it is good practice for a commissioner to abstain from voting on a purchase or contract in which he or she has a potential conflict, it is not clear under the statute that not participating in the decision or vote, without filing the statement of disclosure, cures the problem.

There are statutes that specifically require disqualification regarding certain matters. For example, under IC 36-7-4-223, a county commissioner or a member of a plan commission may not participate in a hearing or decision concerning a zoning matter in

which the board member has a direct or indirect financial interest. Likewise, in most cases, a drainage board member must disqualify himself or herself from serving in matters in which the board member has an interest in property that is affected by a drain under the jurisdiction of the board. {IC 36-9-27-12}

The disclosure statement under IC 35-44-1-3(d), must be in writing, describe the contract or purchase, describe the financial interest and be affirmed under penalties of perjury. It must be submitted to the entity making the purchase or awarding the contract, and be accepted by the entity in a public meeting prior to the award of the contract or authorization of the contract. The minutes of the meeting should reflect the statement of disclosure and acknowledge that the board received the statement. If the contract is awarded or the purchase is authorized, the disclosure must be filed with the State Board of Accounts and the clerk of the circuit court in the county within 15 days. If the public servant is appointed, the disclosure statement must contain the approval of the elected official who appointed the public servant. The State Ethics Commission maintains a file of all statements of disclosure filed with the State Board of Accounts.

There may be some difficulty in interpreting which officials and employees are appointed by elected officials and which are not. Persons appointed to statutory boards or commissions and department heads or deputies specifically mentioned in a statute are clearly within the category of appointed officials. Employees who do not report directly to elected officials may be interpreted to be non-appointed public servants. To provide clarity, counties may wish to adopt an ordinance defining which positions are appointed.

## ***Ghost Employment***

There is no state law prohibiting a person from performing two separate jobs and drawing two salaries from the county, except as noted before, two lucrative offices cannot be held at the same time by the same person.

Even if the positions are found not to be offices, within the meaning of the Constitution, problems arise when:

- A person is paid for two positions and it is impossible to perform the duties of both positions.
- An employee is paid for a position, but has no duties assigned.
- An employee is not expected to perform the duties of the office.
- An employee is expected to perform duties that are not related to the office, such as political work. {IC 35-44-2-4}

## ***Removal***

Indiana does not have a procedure for recalling elected officials, but it does have a statutory method for initiating impeachment proceedings against local officials. The county grand jury and court system conducts the proceedings and subsequent removal. {IC 5-8-1 and IC 35-50-5-1.1}

Any official convicted of official misconduct, bribery, or conflict of interest may be removed from office by a court. The court may also issue an order rendering the person ineligible from holding public office for a period of up to ten years. {IC 35-50-5-1-1}

## **Liability of Torts**

It is possible for county officials to incur civil liability, and be sued for damages or loss caused by wrongful or negligent — though not necessarily criminal — actions taken in an official capacity. These suits may be brought against the county officer as an official agent of the county or against the county officer personally. If the lawsuit is against the officer as an official of the county, the county is an implied codefendant and is required to pay both the costs of defense and the costs of any judgment rendered in favor of the plaintiff. If the lawsuit is against the county officer personally, the county may assume responsibility if it is expedient to do so and it serves the interests of the county. It is within the discretion of the board of commissioners to assume this responsibility.

The Tort Claims Act {IC 34-13-3-3} exempts, to some extent, counties, county officials, and employees from liability for losses under certain circumstances. The actions or conditions for which a governmental entity or an employee acting within the scope of his or her employment will not be liable if a loss occurs include:

- The natural condition of unimproved property.
- The condition of a reservoir, dam, canal, conduit, drain or similar structure when used by a person for a purpose that is not foreseeable.
- The temporary condition of a public thoroughfare that results from weather.
- The condition of an unpaved road, trail, or footpath, the purpose of which is to

provide access to a recreation or scenic area.

- The initiation of a judicial or administrative proceeding.
- The performance of a discretionary function. However, the provision of medical or optical care as provided in IC 34-6-2-38 shall be considered as a ministerial act.
- The adoption and enforcement of or failure to adopt or enforce a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment.
- An act or omission performed in good faith and without malice under the apparent authority of a statute which is invalid if the employee would not have been liable had the statute been valid.
- The act or omission of anyone other than the governmental entity or the governmental entity employee.
- The issuance, denial, suspension, or revocation of or failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order or similar authorization, where the authority is discretionary under the law.
- The failure to make an inspection or making an inadequate or negligent inspection of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety.
- Entry upon any property where the entry is expressly or impliedly authorized by law.
- Misrepresentation, if unintentional.
- Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission.
- Injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by section 7 of this chapter.
- Injury to the person or property of a person under the supervision of a governmental entity and who is: on probation or assigned to an alcohol and drug services program under IC 12-23, a minimum security release program under IC 11-10-8, or a community corrections program under IC 11-12.
- Design of a public highway (as defined under IC 9-13-2-73), if the claimed loss occurs at least twenty (20) years after the public highway was designed or substantially redesigned. This subdivision shall not be construed to relieve a responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.
- Development, adoption, implementation, operation, maintenance or use of an enhanced emergency communication system.
- Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under IC 20-8.1-5.1-7(b).

- An error resulting from or caused by a failure to recognize the year 1999, 2000 or subsequent year, including an incorrect date or incorrect mechanical or electronic interpretation of a date, that is produced, calculated or generated by a computer, an information system or equipment using microchips that is owned or operated by a governmental entity. However, this subdivision does not apply to acts or omissions amounting to gross negligence, willful or wanton misconduct, or intentional misconduct. For purposes of this subdivision, evidence of a gross negligence entity to undertake an effort to review, analyze, remediate, and test its electronic information systems or by showing failure of a governmental entity to abate, upon notice, an electronic information system error that caused damage or loss.

### ***Tort Claim Procedures***

Claims against a county or other political subdivision must be filed with the governing body and the Indiana political subdivision risk management commission 180 days after the loss occurs. {IC 34-13-3-8} If, after filing a claim, the governmental entity does not pay or otherwise settle within 90 days from the filing of the claim, the injured party may file a lawsuit in any court of the state that has jurisdiction to hear such suits. {IC 34-13-3-11} A lawsuit claiming that an employee acted within the scope of the employee's employment bars an action against the employee personally. However, the county may answer that the employee acted outside the scope of the employee's employment. In this case, the plaintiff has 180 days to amend the complaint to bring an action against the employee personally.

In a judgment rendered against a governmental entity or an employee acting

within the scope of his or her employment, the damages are limited to \$300,000 per person and \$5,000,000 per occurrence. {IC 34-13-3-4} These limitations may not apply when the lawsuit involves violations of the United State Constitution or federal laws, such as those involving civil rights or anti-trust provisions.

Unlike a private individual or corporation, no punitive damages may be assessed against a county in a civil proceeding. A judgment against a county is limited to actual damages (the replacement or repair cost of damaged property, medical costs, loss of earnings or support, etc.) and the plaintiff's costs in prosecuting the suit (attorney's fees, etc.).

### ***Liability Insurance***

State law authorizes a county to purchase insurance to cover the liability of itself or its officers and employees. The county must purchase liability insurance by invitation to, and negotiation with, regular providers of insurance. {IC 34-13-3-20} State law also permits counties to participate in other options, such as self-insurance and insurance pools.

As an alternative to liability insurance with a private company, a county may participate in a state-administered liability pool. Created when the cost of private insurance became prohibitive to several local governments, the state plan provides coverage similar to private insurance and offers risk management training to assist counties in lowering long-range costs. The county should weigh the advantages and disadvantages of participation in the state pool relative to private insurance before making a decision.

A county may also participate in the state-administered "catastrophic insurance" pool



program. As the name suggests, this plan offers protection from large single claims that otherwise could devastate a county's fiscal condition. Existing private insurance plans typically cover claims only up to a \$1,000,000 limit. Because the Tort Claims Act permits judgments against local government up to \$5,000,000, the catastrophic pool covers the gap between conventional coverage and the highest level of exposure. A county does not have to participate in the regular state liability pool to participate in the catastrophic pool. (See IC 27-1-29.1)

### ***Personal Liability***

In addition to the Tort Claims Act, separate statutes concern employee liability under contracts {IC 34-13-2} and civil rights laws {IC 34-13-4}.

Under all three statutes, if the loss occurred as a result of an act or omission within the scope of an employee's employment and if it is in the best interest of the county, the county must pay the judgment, compromise or settlement. Also, the county must pay all costs and fees incurred by or on behalf of an officer or employee in defense of a claim or suit and provide counsel in the case of tort claims. For tort and contract claims, a judgment rendered to, or a settlement made by, a unit of government bars an action by the claimant against the officer or employee whose conduct gave rise to the claim resulting in the judgment or settlement.

In both tort and civil rights actions, a court may award attorney fees to the county if it finds the plaintiff's claim to be frivolous, unreasonable, or groundless, or litigated in bad faith.

# Chapter 4

## POWERS AND DUTIES OF COUNTY OFFICIALS

An effective county official not only needs an understanding of his or her own office, but also needs a working knowledge of the duties and responsibilities of the other county offices. This chapter covers the various functions each elected official must perform as a member of the county team.

The most familiar form of government is the division of government into three branches or functions: the executive; legislative; and judicial. Under this model, the concept of separation of powers and a system of checks and balances delineate the various duties among the various branches of government. Unfortunately, county government in Indiana is not organized in accordance with this model. Sometimes it is difficult to discern the areas of responsibility among the various elected officials.

### Legislative Functions

Throughout the Indiana Code, the board of county commissioners is variously referred to as the executive body or the legislative body. Under IC 36-2-3-2 the council is defined as the fiscal body. Under IC 36-2-4, both the board of county commissioners and the council are given legislative authority in that they both may adopt ordinances. In all but three of the counties: Lake, Marion, and St. Joseph, the legislative power of the county is divided between the board of county commissioners and the county council. In these three counties full legislative power is vested in the council by

state statute. Under IC 36-2-3.5, other counties may adopt this arrangement if the county commissioners and county council pass identical ordinances.

Despite the definitions (and apart from the three counties that are the exception), the commissioners and council each have certain legislative functions. A discussion of the specific differences in legislative responsibilities requires a lengthy recitation that is beyond the scope of this handbook. As a rule, the council has jurisdiction over fiscal matters and the commissioners have jurisdiction over matters concerning either the exercise of regulatory or administrative powers.

The following generally describes the legislative role of the commissioners and the council in most Indiana counties.

### *County Commissioners*

In most Indiana counties, the county commissioners may adopt ordinances regulating behavior. Specifically, they have authority to pass ordinances in the following broad areas:

- To provide for traffic control. {IC 8-17-1-40}
- To establish minimum housing standards. {IC 36-7-8-4}
- To grant vacation pay, sick leave, paid holidays and other similar benefits to county employees. {IC 5-10-6-1}

- To administer elections in conjunction with the county election board. {IC 3-5 and IC 3-6}
- To incorporate new towns and alter township boundary lines, on petition. {IC 36-6- 1}

In most cases the county may exercise its regulatory powers only in the unincorporated areas of the county. As a general rule, although there are some exceptions, the county does not have jurisdiction to regulate behavior in the incorporated cities and towns of the county. An exception would be the adoption of ordinances restricting smoking as several counties have adopted county-wide smoking ordinances.

The commissioners are the custodians of the home rule powers of the county. Within the scope of home rule, commissioners may adopt and vest themselves with additional regulatory powers. In Lake, Marion, and St. Joseph counties, the county councils are the home rule custodians and have authority to bestow specific, additional powers on the commissioners. (Generally see IC 36-2-2 for duties of the board of county commissioners.)

### ***County Council***

The council has the ultimate decision-making power regarding fiscal affairs. The council has authority to view or review fiscal matters, determine proper policy, and set priorities for the allocation and expenditure of county funds.

The General Assembly determines the powers of the county council in this area. Typically these powers include:

- Approving and fixing annual operating budgets of all county government offices and agencies. {IC 36-2-5-7}
- Establishing salaries, wages, per diems, and other compensation for all county officials and employees. {IC 36-2-5-3}
- Fixing tax rates and establishing levies on all county property for the purpose of raising funds to meet budget requirements in conducting county business [IC 36-2-5-11}, as well as authorizing the borrowing of money in the form of bonds and notes. {IC 36-2-6-18}
- Appropriating public funds, i.e., authorizing the expenditure of county money by particular officials or departments for specific purposes. {IC 36-2-5-11 and IC 36-2-5-12}
- Authorizing certain purchases or sales of county owned land. {IC 36-1-11-3}
- Performing non-binding review of civil units' budgets within the county and comparing growth rates of civil units with non-farm income growth. Review becomes binding on non-elected units when those units exceed statewide growth average. {6-1.1-17-20.5}

Under IC 36-2-3-6, the county council may employ legal and administrative personnel necessary to perform its duties. (Generally see IC 36-2-3, for duties of the county council.)

### **Executive Functions**

The structure of county government in Indiana allows for a dispersion of executive and administrative power, each with statutorily vested powers and duties. There

the need for developing cooperative attitudes and a spirit of genuine teamwork among all elected officials.

This constitutional statutory framework in Indiana counties calls for mutual appreciation and understanding of the pattern of administrative functions and duties allocated among the elected officials. Toward that end, the following subsections summarize the basic executive or administrative functions that the General Assembly has granted to each county elected official.

### ***County Commissioners***

The board of county commissioners as a body has a wide range of executive and administrative authority. Among the most important powers are those related to:

- Auditing and authorizing claims against the county. {IC 36-2-6-2}
- Receiving bids and authorizing contracts.
- Controlling, maintaining, and supervising county property including courthouses, jails, and public offices. {IC 36-2-2-24}
- Supervising construction and maintenance of roads and bridges.
- Exercising appointive powers including both the selection of members to fill positions on boards, commissions, and committees, and appointments of certain department heads.
- Planning and implementing strategies for solid waste handling as members of solid waste district boards. {IC 13-21-3-1}

- Serve on the County Board of Finance with County Treasurer. (See Page 36 for more information.)

### ***Meetings and Transactions of Business***

Although the law requires the board of county commissioners to meet only once each month, the demands of public business may require more frequent sessions. {IC 36-2-2-6} These meetings must be open to the public and conducted on a regular basis. The auditor of the county serves as the official record keeper for proceedings. {IC 36-2-2-11} When only two members of the county board attend the meeting and there is no consensus, the board must defer final actions until all of the members are in attendance. {IC 36-2-4-6} The Indiana Open Door and Public Access to Records statutes apply to county commissioners' meetings. (See Chapter 6 of this handbook.)

The board of commissioners may call a special session whenever public interest requires it. The commissioners or the county auditor may call a special meeting. If the office of county auditor is vacant, the county clerk may call a special meeting. If the offices of both the county auditor and the county clerk are vacant, the county recorder may call a special meeting. At least six days notice must be given for a special meeting unless there exists an emergency that requires shorter notice. {IC 36-2-2-8} The commissioners may transact business only on those matters for which the special meeting was called.

The commissioners must maintain an office and keep it open on each business day. {IC 36-2-2-10} The commissioners may hold their meetings in a building other than the county courthouse if the county courthouse is not suitable or convenient or if there are

other county government buildings available. {IC 36-2-2-9}

### ***Administrative Assistance***

With an ever-increasing demand on the time requirements of county commissioners and the increasing complexity of the duties and responsibilities, some county commissioners employ the services of a county administrator as provided for by state law. The administrator holds office at the pleasure of the board and performs day-to-day responsibilities under the direct control of the board of commissioners. The board may also assign to the county administrator the duties of any office or position under its control. The board also may, by resolution, withdraw any of the powers and duties assigned to the administrator. {IC 36-2-2-14}

### ***Auditor***

The county auditor must wear many hats. The following attempts to categorize the most important duties of the office.

- **Coordinator of Tax Collection and Distribution**

The auditor is directly responsible for preparing tax duplicates showing the value of property and taxes assessed against each taxpayer. After taxes are collected by the treasurer, the auditor distributes them to the governmental units and agencies for which they were collected. As a part of the tax function, the auditor must also prepare plats that show the ownership and assessed valuation of each parcel in each township in the county. The plats must contain information prescribed by the Department of Local Government Finance (DLGF) and must be kept current. If property taxes become delinquent, the auditor must prepare a delinquency list in preparation for the offering at public sale of the parcels owing delinquent property taxes.

- **County "Comptroller"**

Many of the above functions have to do with controlling public funds. In keeping accounts and issuing warrants, the auditor must develop financial analysis and cash flow projections and assist with budget preparations. The auditor is the principal financial officer in county government and is defined under IC 36-2-9-2 as the fiscal officer of the county. (Generally see IC 36-2-9 for duties of the county auditor.)

- **Key Assistant**

The auditor serves as a secretary to the board of county commissioners {IC 36-2-2-11} and the clerk to the county council. The auditor has responsibility for keeping accounts and issuing warrants for the payment of claims against the county. As a result, the board of commissioners, the council and other officials often look to the auditor for day-to-day operational assistance, information and advice. The auditor is responsible for all documents, books, records, maps and papers deposited in the auditor's office.

### ***Treasurer***

In some states, the person who performs the duties performed by county treasurers in Indiana is referred to as the tax collector. That title perfectly describes the primary duty of the county treasurer. Not only is the county treasurer responsible for collecting taxes, but in the case of delinquent taxes, the treasurer may order the sale of real property to pay delinquent taxes. The treasurer also receives distributions of local income and other taxes that are collected by the state. The treasurer is responsible for the collection of some taxes imposed by state law on behalf of the state.

- The Treasurer also acts as the primary investment officer, having custodial and investment responsibility for all taxes and other revenues collected by county government. Together with the auditor, the treasurer insures the proper distribution of funds. The county treasurer serves as treasurer ex officio to the board of hospital trustees in some counties. The Treasurer also serves on the County Board of Finance with the County Commissioners. See Page 36 for more information. (Generally see IC 36-2-10, for duties of the county treasurer.)

### ***Assessor***

The primary duties of the county assessor are to:

- Certify assessed values to the county auditor. {IC 6-1.1-4-24}
- Serve as the secretary of the county property tax board of appeals {IC 6-1.1-28-1}, the entity that hears all property tax assessment appeals within the county.
- Perform the duties of a township trustee-assessor who fails to perform his or her duties in a timely manner. {IC 36-2-15-5(b)}
- Select the assessment computer system used by all the assessing officials in the county.
- Discover and assess property omitted by the township assessor (if any) and trustee/assessors.
- Equalize assessments in the county.

- Advise and instruct all township assessors in his or her county as to their duties.
- Perform annual trending.

Legislation adopted by the 1997 General Assembly rearranged some of the assessing duties of the county assessors, township assessors and township trustee/assessors, giving county assessors some additional authority. The same legislation also reformulated the county board of review and renamed it the county property tax board of appeals.

The county assessor works closely with the Department of Local Government Finance, which adopts the rules for assessing of property in Indiana. (Generally see IC 36-2-15, for duties of the county assessors.)

### ***Surveyor***

The surveyor must prepare, maintain, and keep in his or her custody a legal survey record book showing maps of each section, grant tract, subdivision or group of such areas in sufficient detail so that the approximate location of each such legal survey may be shown. {IC 36-2-12-11}.

If the surveyor is registered as a land surveyor under IC 25-21.5, he or she maintains a corner record book. If the surveyor is not a registered land surveyor, the surveyor, with the approval of the commissioners, appoints a registered land surveyor to keep the corner record book. A county surveyor registered as a land surveyor under IC 25-21.5 or IC 25-31, is entitled to compensation at a rate one and one half times as much as a surveyor who is not licensed. {IC 36-2-12-15(b)}

If the surveyor is a civil engineer, the surveyor supervises all civil engineering

work of the county. If the surveyor is not a civil engineer, the commissioners must appoint a civil engineer for each project. {IC 36-2-12-8}.

In addition, the surveyor supervises all legal ditch construction, serves as an *ex officio* member of the county drainage board and the county plan commission. (Generally see IC 36-2-12, for duties of the county surveyor.)

### **Coroner**

The chief responsibility of the coroner is to determine the manner of death in cases involving violence, casualty, unexplained or suspicious circumstances or when the person has been found dead. {IC 36-2-14-6}

When notified of a death under any of the above circumstances, the coroner must alert and obtain the investigative assistance of the law enforcement agency having jurisdiction in the area.

When the coroner determines the cause of death, the law requires the coroner to file a report of his or her findings with the local health officer. If an autopsy is necessary, the coroner **must** employ a qualified physician to conduct it. Additional reports of the cause of death must be filed with the clerk of the circuit court. A county coroner, who is also a licensed physician is entitled to one-and-one-half times as much compensation as a non-physician coroner. {IC 36-2-14-15} (Generally see IC 36-2-14, for duties of the county coroner.)

### **Sheriff**

The responsibilities of the sheriff include:

- Serving as conservator of the peace. {IC 36-2-13-5}

- Taking care of the county jail and the prisoners confined in the county. {IC 36-2-13-5}
- Feeding prisoners, for which an amount is fixed annually by the State Board of Accounts. {IC 36-8-10-7}
- Administering work release programs. {IC 11-12-5-3}
- Serving as an officer of the courts in the county to deliver service of warrants, subpoenas, and other forms of process. {IC 36-2-13-5}
- Collecting delinquent state income tax or levying on the property of taxpayers for the amount due when a warrant is issued by the Indiana Department of Revenue commanding him or her to do so, and transmitting to the Department of Revenue the amount collected. For the sheriff's services in collecting and remitting otherwise uncollectible state tax delinquencies, the sheriff is entitled to retain ten percent. {IC 6-8.1-8-3}
- Selling mortgaged property under foreclosure proceedings and executing real estate deeds of property sold under execution. {IC 34-55-6}
- Conveying prisoners to correctional institutions.

Any sheriff has the authority to request the aid of any other sheriff and/or deputies and assistants in the state in an emergency situation or for specific assignments that require specialized personnel. The sheriff has complete hiring authority over the positions of chief deputy and prison matron. The sheriff may hire other deputies only from a list of candidates prepared jointly by the sheriff and merit board. {IC 36-8-10-10}

A sheriff may appoint a person as special deputy if the person is employed by a governmental entity or a private employer, if the nature of the person's employment requires the person to have the powers of a law enforcement officer. The sheriff shall fix the training, education and experience requirements for a special deputy, and the special deputy must meet the minimum requirements of IC 36-8-10-10.6(b). The sheriff may also appoint reserve deputies, if the county commissioners have enacted an ordinance specifying an authorized number of reserve deputies. {IC 36-8-3-20}

If requested by the county commissioners or county council, the sheriff or a county police officer must attend the meetings of those respective bodies. {IC 36-2-2-15(d) and IC 36-2-3-6}

There are various ways a county may set the compensation of the county sheriff. Under IC 36-2-13-2.8, the county may pay a sheriff from the general fund as it does other county officials. Under this method of compensation, there is a maximum salary that is paid from the county general fund. The level of the maximum salary depends on the population of the county. Under this provision, in addition to the compensation paid from the county general fund, the sheriff may retain the sheriff's tax warrant collection fees under IC 6-8.1-8-3.

Sheriff's elected after 2010 will be limited in annual compensation to the salary of a full-time prosecutor plus any additional money contributed by the county to the full time prosecutor. The Sheriffs compensation includes tax warrant and meal money but excludes any state, federal, or other local government retirement or disability. Under IC 36-2-13-2.5, the county and the sheriff may negotiate a contract. Under this

provision, the sheriff may not retain the sheriff's tax warrant collection fees under IC 6-8.1-8-3, or a profit from the feeding of prisoners. Prisoner meals must be paid from an appropriation from the county general fund or an allowance under IC 36-8-10-7. If the sheriff pays for prisoner meals from an allowance under IC 36-8-10-7, the sheriff must transfer any excess funds to the county general fund. In addition, some sheriff expenditures from the commissary fund must be reviewed by the county council under IC 36-8-10-21.

If a county elects to compensate a sheriff in a manner other than the methods provided for under IC 36-2-13-2.5 or IC 36-2-13-2.8, it should be aware that there might be unintended pension contribution and income tax consequences. However, under legislation adopted in 1997, the county may limit the pension consequences by adopting an ordinance limiting the definition of average monthly income for pension purposes. {IC 36-8-10-12.1} (Generally see IC 36-2-13, for duties of the county sheriff.)

### ***Recorder***

The county recorder's function is to maintain permanent public records involving a wide variety of instruments. These documents detail transactions involving real estate, mining, personal property, mortgages, liens, leases, subdivision plats, military discharges, personal bonds, etc. {IC 36-2-11-8} Generally, all of these instruments are recorded either for giving legal public notice of their existence or for safekeeping and future reference.

The recorder maintains and preserves all legal documents affecting title to real property. These records are the legal basis for determining ownership. The degree with which the recorder fulfills his or her responsibilities ultimately forms the legal



foundation for the institution of private property. The recorder is a member of the county commission on public records, which has authority over the preservation or disposition of all public records maintained by the county. {IC 5-15-6}. (Generally see IC 36-2-11, for the duties of the county recorder.)

## **Judicial Functions**

The county level court system is at the very heart of all judicial functions in Indiana. All county level courts are part of the network of the state court system. The Governor has the authority to fill all elected court vacancies.

The circuit courts in Indiana are courts of original jurisdiction. They are presided over by judges who serve for a term of six years. Circuit court judges, like judges of all state courts, must be admitted to the practice of law. In addition to the circuit courts, the General Assembly has created superior courts, which in most cases, handle the same types of cases that the circuit courts handle. In some cases, counties have more than one superior court.

In 1975, the legislature replaced the existing minor courts (the justice of the peace courts, and most city and town courts) with a combination system in which approximately one-third (1/3) of the counties were assigned a circuit court. Today, all but four counties have their own circuit court.

The court system is a vital part of the system of local governance. However, the function and structure of the court system is much too broad and complex to handle sufficiently in this handbook. There are, however, two county elected offices that exercise a wide range of judicial functions that are included.

They are the prosecuting attorney and the clerk of the circuit court.

### ***Prosecuting Attorney***

Although elected by voters in each judicial circuit, the prosecuting attorney represents the state of Indiana, and prosecutes violators of state statutes in all courts having criminal jurisdiction within the judicial circuit. This office is not strictly a county office. The prosecutor is elected to represent a judicial circuit. There are two judicial circuits that have boundaries larger than a single county.

The original authority for the prosecutor is found in Article 7, Section 16, of the Indiana Constitution. However, the General Assembly in statute has established the specific duties and responsibilities of the prosecutor's office. (Generally see IC 33-14, for duties of the county prosecutor.)

### ***Clerk of the Circuit Court***

Article 6, Section 2, of the Indiana Constitution establishes the office of the clerk of the circuit court. The General Assembly, by statute, has assigned responsibility for many of the administrative functions of the county courts to the clerk of the circuit court, which is sometimes referred to as the county clerk. In addition, the General Assembly has assigned other non-court related governmental duties to the office of the clerk. The following is a brief description of the functions of the clerk of the circuit court.

**Judicial Related Functions.** The clerk, or a deputy, must attend all sessions of the court, and keep a record of all judgments, orders and decrees of the court. The clerk also must certify and attest to complete transcripts of court proceedings involving title to property, the imposition of prison sentences and in all court cases where a complete court record is required. The clerk

maintains all records of pleadings, motions, papers, evidence and court rulings of the court. The clerk may grant motions and application for process, such as for the enforcement and execution of previous orders of the court, judgments by default and other proceedings that do not require the order of the court. These actions of the clerk, however, are subject to review by the court.

The clerk receives complaints and initial pleadings in matters brought before the court. The clerk places cases on the court docket and prepares, under direction of the judge, calendars of cases awaiting trial. The clerk also issues summonses and subpoenas to witnesses ordering them to appear in court. The clerk receives payment of fines and money judgments levied by the court. In the case of a money judgment, the clerk pays the money to the person or entity entitled to the judgment. In recent years, the collection of child support has become a major responsibility of the clerk's office. The clerk does not collect a tax judgment, which is the duty of the county treasurer.

The clerk charges and receives court costs and fees (or clerk's costs) in connection with court actions or other legal business and service of the court. The clerk receives fees for making transcripts of records when a person is convicted, when a will is probated, and when other court business is transacted. The clerk prepares budget estimates for all courts of which he or she serves as clerk. They are submitted to the county council after review and approval of the respective judge.

**Election Related Functions.** The clerk serves as an *ex-officio* member and secretary of the county election board and as a member and clerk of the county board of canvassers. The clerk appoints the other

members of the county election board and the board of canvassers. These appointments must be made from each of the two major political parties and from nominations filed in writing by the county chairs of the two major parties. The clerk receives filings of candidacy from persons seeking certain elective public offices and issues certificates of election to successful local candidates except in the cases of constitutional officers, who receive their commissions from the Governor.

The county clerk serves as the voter registration officer in all counties having a population of less than 125,000 persons that do not have a board of voter registration. Serving in this capacity, the clerk has full charge and control of the process of registering voters in the county, including certification of deputy registration officers. Counties having a population of 125,000 or more must have a board that performs these functions. {IC 3-7-12-3}

**Other Administrative Functions.** The clerk also performs certain services to the public that are not directly or obviously judicial functions, but concern legal or quasi-legal affairs. These include the issuance of various licenses and certificates such as: marriage licenses, licenses for distress sales, and the registration of bail agents. Clerks may issue hunting and fishing licenses. Clerk's fees are charged for these services. The clerk may also solemnize marriages; the clerk is not allowed to accept payment for this service. In the future the clerk may be allowed to collect a fee for this service. (Check for updates to the Indiana Law during sessions of the Indiana General Assembly.) The clerk may administer oaths, including the oaths of office for county officials. (See generally IC 3-7-27 and IC 33-17-1 for duties of the county clerk.)

# Chapter 5

## UNDERSTANDING COUNTY FINANCES

County finance is one of the most important but difficult aspects of county government to understand. Regardless of the position in county government, every county official is concerned with the amount of revenue the county has available, the source of the revenue, how the revenue is allocated and how it is expended. This handbook divides the subject of county finance into three main sections.

The first section concerns the various financial sources from which counties derive their revenue. These sources are diverse, and the mix of the sources varies substantially from county to county. Each source is important and most counties have an opportunity to receive money from each of the various sources.

The second section, which is of critical concern to all officials, is that of financial allocation or budgeting. This involves a process by which the financial requirements for county departments and programs are determined and priorities are set.

The third section concerns financial utilization, the expenditures made by the county and the procedures that must be followed.

### Financial Sources

There are six major categories of county revenue: local taxes, state funding, federal funding, debt funding, investment income and miscellaneous revenue.

### *Local Taxes*

Taxes are the primary source of revenue for counties. The following are the various types of taxes that a county may levy:

### *Property Tax*

Property taxes are the traditional source of revenue for counties and other units of local governments. A property tax is levied on all real property and all business and farm personal property, unless the property is specifically exempt from property taxation.

County Assessors {IC 36-2-15-5 Version b} or township assessors and trustee assessors (if any) {IC 36-6-5} determine the assessed value of real property in accordance with the rules of the Department of Local Government Finance (DLGF), the state agency charged with regulation of the property tax and budget functions of local governments. Business and farm personal property is self-assessed, according to the rules of the DLGF. The taxpayer files a return reporting the assessed value and the township assessor or trustee assessor verifies the accuracy of the return. The assessment of both real and personal property is subject to review and adjustment by the county property tax assessment board of appeals {IC 6-1.1-13} and the Department of Local Government Finance. {IC 6-1.1-14} Article 10, Section 1 of the Indiana Constitution requires “. . . a uniform and equal rate of property assessment and taxation. . .”

The property tax on a particular parcel of property or an item of personal property is determined by multiplying the combined tax

rate of all the taxing jurisdictions in which the property is located (the tax rate of the taxing district) by the net assessed value of the parcel or the item of personal property less any credits that are applicable, such as the property tax replacement credit or the homestead credit. The net assessed value of property is the gross assessed value minus any deductions.

The assessed value of the county is the total assessed value of all the taxable property in the county plus the assessed value reported on the personal property tax returns. County assessed values for 2007 pay 2008 ranged from \$244,070,310 in Crawford County to \$40,226,503,968 in Marion County.

Subject to the property tax levy control statutes, the county council sets the tax rate for the county, as does the fiscal body of each city, town, township, school corporation and special taxing district. The county council must set the annual budget, tax rate, and tax levy at a meeting held no later than September 20 of the year preceding the budget year.

The maximum property tax levy of a county (the total amount of money that can be raised from property taxes) is limited by a statutory formula referred to as the property tax controls or the property tax freeze. The formula was originally enacted in 1973 and has been amended numerous times since.

The maximum property tax levy is calculated by multiplying the county's current year maximum property tax levy by a growth factor. The growth factor ties a county's growth formula to the state's non-farm personal income growth by averaging the six previous years. Locals can appeal if the three year Assessed Value Growth Quotient (AVGQ) is growing three percent faster than statewide AVGQ. A county may

set its actual levy at an amount lower than the maximum permitted by statute.

If a county determines that its maximum levy is not sufficient to “. . . carry out its governmental functions for the ensuing year," the county may file a request with the local government property tax control board for an increase in its maximum property tax levy (commonly known as an excess levy). However, the local government tax control board will increase a maximum levy under only the specific circumstances outlined in IC 6-1.1-18.5-13. DLGF makes the final decision regarding excess levy appeals.

### ***Circuit Breaker***

Beginning in 2009, the amount of property taxes levied from a piece of property cannot exceed a percentage of that properties net assessed value. For homestead properties the tax cap or “circuit breaker” will be 1.5% in 2009 and 1% in 2010 and subsequent years. For residential rental property, apartments, agriculture land, mobile home land, and long term care facilities the cap will be 2.5% in 2009 and 2% in 2010 and subsequent years. For all other real and personal property the cap will be 3.5% in 2009 and 3% in 2010 and subsequent years. Dollars that would have been raised based on the local units tax rates but for the caps are provided to the taxpayer as tax credits and the local units will not receive the dollars in proportion to their share of the levy.

### ***Local Income Taxes***

Counties may adopt one or two of the three forms of local option income taxes: the county adjusted gross income tax (“CAGIT”); the county option income tax (“COIT”); or the county economic development income tax (“CEDIT”).

Several features are common to all three of the local option income taxes. The adoption of any of the taxes is a matter of local discretion. All are calculated using state adjusted gross income tax as the base. All are collected by the Department of Revenue at the same time and in the same manner that state income taxes are collected. The resolution imposing the tax must be adopted on or before April 1 of the year in which the tax is imposed.

CAGIT revenues are distributed to all taxing units in the county. COIT revenues are distributed to all civil taxing units, but not to school corporations. For solid waste districts to receive CAGIT distributions, the fiscal body of each member county must approve the distribution. A county may impose either CAGIT or COIT, but not both. A county may impose CEDIT, along with CAGIT or COIT. The CAGIT and CEDIT combined rate may not exceed 1.25%, and the COIT and CEDIT combined rate may not exceed 1%. There are, however, specific statutes that allow a combined COIT and CEDIT rate of 1.25% for certain specified purposes.

The major difference among the various taxes is the use of the money collected. For the most part, CAGIT revenues are used as property tax replacement. COIT revenues are discretionary money and, generally, may be expended for any governmental purpose. COIT revenues may be used for additional expenditures or for property tax replacement. CEDIT revenues were used to attract or retain economic development in the community and/or for a capital construction project. However, during the 2005 legislative session, legislation was approved which allowed both COIT and CEDIT to be used for any lawful purpose of the taxing unit.

The CAGIT tax rate may be set at either .5%, 75%, or 1% of an individual's state adjusted gross income. Revenues are distributed to adopting counties twice a year in May and November. They are allocated among all local-taxing units in the county, including school corporations, cities, towns and townships. Most of the revenue is dedicated to property tax replacement; the remainder is an additional source of revenue for the county and the other civil units of government. {IC 6-3.5-1.1}

**Only a county income tax council may impose COIT.** COIT is adopted by the county income tax council, rather than the county council. The income tax council never meets as a body. Each county has 100 votes that are divided among the cities, towns and county according to population. Each common council and town council, along with the county council passes a resolution casting its share of the votes. This results in the county council making the determination in a county where a majority of the county's population lives in the unincorporated areas and the common council of a city making the determination in a county where a majority of the county's population lives in a particular city.

Unlike CAGIT revenues, COIT revenues are distributed to taxing units on a monthly basis. COIT is imposed initially at 0.2 % on county resident taxpayers and .05% on all other county taxpayers. The rate on county resident taxpayers may increase by 0.1% annually to a maximum of 1%. The rate on a non-resident taxpayer is one-fourth the rate applied to a county resident taxpayer.

Under the COIT legislation, the state retains six months of COIT collections. Counties may adopt a resolution requiring the state to distribute three months of that retained amount. {IC 6-3.5-6}

In a CAGIT county, the county council may impose CEDIT. In COIT counties, the county income tax council may impose CEDIT. In a county that has not imposed either CAGIT or COIT, either body may impose CEDIT. The CEDIT rate imposed may range from 0.1% to 0.5%. The revenue is distributed semi-annually in May and November and allocated only among the city, town, and county governments. In addition, these units must have a plan in place specifying the use of the funds before receiving any distribution. Any unit of government may pledge its CEDIT revenues to any other unit that can receive CEDIT. This usually happens when one-unit issues bonds or enters into a lease rental agreement to construct a project that is beneficial to more units than the unit constructing the project. {IC 6-3.5-7}

Counties may also adopt what is called the Local Option Income Tax or LOIT. The LOIT is primarily a way to reduce property taxes through the raising of income tax revenue. In CAGIT counties, the County Council makes the choice on whether to adopt the LOIT. In COIT counties, the COIT Board makes the decision. There are two options for property tax relief. The first option caps the property tax levy growth of county and funds any additional growth in the budget with income taxes. This tax can be raised up to 1%. The second option provides dollar-for-dollar property tax relief with the income taxes being used to lower property taxes. The adopting body has the choice of directing the income tax revenue to reduce property taxes on certain classes of property. For example, property tax relief could be directed to homesteads, certified residential, all classes or some combination thereof. This tax can also be raised up to 1%.

If either the “levy growth” or “dollar-for-dollar” property tax options are implemented individually or in a combination of at least .25% then the adopting body is eligible to adopt the public safety income tax up to at least .25%. The taxes raised must be used for public safety purposes only.

### ***Inventory Tax Reduction***

In the 2006 pay 2007 property tax cycle, the inventory tax was repealed by state statute. Between assessment years 2003-2005, counties could eliminate the tax through action by the county council or a COIT council. An eligible entity (see below for definition) may increase their EDIT tax to create revenue to provide a homestead credit to reduce the property tax increase caused by the elimination of the inventory tax.

An eligible entity depends on whether CAGIT or COIT is in effect in the county.

If COIT is in effect, then only the Income Tax Council acts.

If CAGIT is in effect in the county, then only the County Council acts.

In a county which has neither COIT nor CAGIT in effect EITHER the county council or the income tax council can act.

An eligible entity is not required to adopt an EDIT increase to pay for an increased homestead credit to replace inventory AV. AV property will increase for levy controlled funds.

If an eligible entity wants to increase EDIT they may do so at a rate equal to or below (but not to exceed .25%) the amount necessary to provide a homestead credit

that would offset the tax burden shift from AV on inventory to AV on residential property. The EDIT tax under this section does not apply against your “normal” income tax limit. This will not be new money for the county. Whatever money is raised through this EDIT must be used to provide property tax relief to homeowners. Homeowners’ increase in property taxes (on average) due to the elimination of inventory AV from taxation will be offset if the EDIT is adopted and homestead credits are provided. The property taxes on other taxable property, including non-inventory business and land, will increase because the tax rate will increase.

The homestead credit from the EDIT funds can be the same (uniform) throughout the county or apportioned by the taxing district. If the homestead credit from the EDIT funds is a uniform credit, some homeowners will benefit more than others, depending on how much inventory AV is in their tax district.

### ***Motor Vehicle Excise Surtax and Wheel Tax***

Each county has the authority to adopt two additional local taxes: the county motor vehicle excise surtax and the county wheel tax. A county must adopt both taxes at the same time. It cannot adopt one without the other. Actions to initially adopt both taxes, as well as to subsequently increase, decrease or rescind them, require an ordinance by the county council after January 1 and before July 1 of any year in order to be effective for the following year.

The surtax is imposed on each motor vehicle registered in the county at a locally selected rate between 2% and 10% of the amount in the schedule appearing in IC 6-3.5-4-7.3. The surtax on any vehicle may not be less than \$7.50.

The wheel tax is imposed on buses, trucks, recreational vehicles, semi-trailers, tractors, and trailers registered in the county at locally selected rates for each weight classification. The minimum rate is \$5 per vehicle and the maximum is \$40 per vehicle. Both taxes are collected by the local license branch, remitted to the county treasurer, and, for all counties except Marion County, allocated among the county and the cities and towns within the county on the basis of the local road and street formula. Revenues from the surtax and the wheel tax may be used exclusively for road construction and maintenance.

### ***Special Local Taxes***

From time to time, the General Assembly has authorized specific counties to levy special taxes to finance a particular project or program, such as a convention center, medical center, or other major public facility. These special taxes frequently take the form of an innkeeper’s tax on hotel and motel facilities and other transient lodgings or a food and beverage tax on food consumed on the premises. Any county may adopt an innkeeper’s tax under the uniform statute. {IC 6-9-18} The revenue from the uniform innkeeper tax must be used to promote conventions, tourism and development.

### ***Special Assessments and “Special Benefits” Taxes***

There are two other kinds of local “tax-like” revenues: special assessments and special benefits taxes.

Local governments may impose special assessments on property owners who realize direct benefits from public works projects such as drainage construction, or county highway and road construction. Using the Barrett Law, counties may impose special

assessments for the construction of sidewalks, curbs, sewers, emergency warning systems and related improvements in developing areas outside the municipal boundaries. These assessments help defray the costs of construction or retire bonded indebtedness incurred to finance a particular project. Procedures for imposing a special tax assessment vary but usually involve petitioning and conducting public hearings prior to the imposition of any assessment.

Special benefits taxes differ from special assessments in that they are ad valorem taxes imposed annually for a limited purpose. That purpose is often to benefit some group of citizens. A special taxing district may levy a special benefits tax. For example, a county may establish a separate county park and recreation district to levy an annual special benefits property tax on all property included in the district to pay interest and principal on capital improvement bonds sold to acquire land or construct facilities for park and recreation purposes. These revenues become part of the park district budget and are in addition to the county's own property tax levy.

The county must keep money collected from special assessments and special benefit taxes in a separate fund and may use the money only for the project and/or purpose for which they were levied.

## State Distributed Funds

Counties share in certain revenues from the state in the form of state-collected taxes, licenses and fees. The revenues from such taxes are dedicated or distributed, in whole or in part, to local government units. Other forms of state funding are special grants-in-aid and appropriations for specific purposes.

## *State Distributed Taxes*

The following is an itemized list of state taxes distributed to counties:

- **Motor Vehicle Excise Tax** {IC 6-6-5}: This tax is in lieu of a property tax on motor vehicles. The entire amount of the tax goes to local taxing units, including schools. It is apportioned and distributed in the same way that property taxes are apportioned and distributed according to where the owner of the motor vehicle resides. Distributions are made on a monthly basis.
- **Aircraft Excise Tax** {IC 6-6-6.5}: This tax was first imposed in 1975 on the registration of private aircraft. It is collected by the Department of Revenue in lieu of a property tax. Like the motor vehicle tax, this tax is also distributed to local taxing units in which the aircraft is ordinarily located when not in operation. Distributions are made on a quarterly basis.
- **Boat Excise Tax Fund** {IC 6-6-11}: Like the motor vehicle and aircraft excise tax, the boat excise tax is in lieu of personal property tax on watercraft. First imposed in 1990, the tax is collected by the Bureau of Motor Vehicles. Distributions are made to the local taxing units in which the watercraft was located on March 1, unless the boat is registered outside the state. In this case, it would be distributed to the local taxing unit where the boat was principally operated or stored while in the state.
- **Financial Institution Franchise Tax** {IC 6-5.5}: A franchise tax is imposed on financial institutions for the privilege of doing business in the state. Revenues are apportioned to the county and other



taxing units based on the amount of bank or savings and loan association tax that was received by the various taxing units in 1989 less the personal property tax levied against bank tangible property in the current year. Distributions are made on or before February 1, May 1, August 1 and December 1 of each year.

- **State Inheritance Tax** {IC 6-4.1}: The inheritance tax is collected by the county treasurer when a county resident dies. In all counties except Marion County, 8% of the collected amount is retained by the county general fund and 92% is remitted to the state. In 1997, the law was changed to reduce the number of persons liable for the tax and the amount of inheritance collected.
- **Alcoholic Beverage Permit Fees** {IC 7.1-4-9}: Fees collected in connection with the issuance of alcoholic beverage dealer and retailer permits are deposited in the state excise fund. Of this money, 33% is distributed to cities and towns in which the licensed premises are located. If the dealer is located in an unincorporated area, the distribution goes to the county general fund.
- **Highway User Tax**: A significant portion of the gas tax revenues collected by the state is dedicated to the state motor vehicle highway (MVH) account. Of the amount remaining in the MVH after refunds, administrative expenses and appropriations to the state police and Bureau of Motor Vehicles, 32% is distributed to the counties. {IC 8-14-1-3} The amount of money represented by this 32% is allocated among counties as follows: 5% is divided equally among the counties; 65% is apportioned according to the ratio of mileage of active county roads in the county to the

total mileage of all active county roads in the state; and 30% is apportioned according to the ratio of the number of vehicle registrations in the county to the total number of vehicle registrations in the state. This money is deposited in a special county highway fund. The county may only use the money for the construction and maintenance of roads and highways, the purchase, rental and maintenance of highway equipment and the purchase of necessary supplies.

Part of the gas tax revenues collected by the state is allotted to the special highway user account. Local governments receive 45% of these funds, referred to as the local road and street account ("LR&S"). Funds in the LR&S account are divided among local governments under a formula based on population, road mileage and vehicle registrations. The formula is designed to favor municipalities in counties of more than 50,000 in population and county highway departments in less populated counties. LR&S funds are distributed monthly and may be used for most purposes for which MVH funds may be used with the exception of administrative salaries, expenses, and the purchase of equipment. {IC 8-14-2-4}

Another distribution of highway user taxes is the "accelerated distribution" of MVH and LR&S funds. This is not actually a different fund, but a special distribution formula that is used for the first \$25,000,000 collected from the gasoline tax and the special fuels tax in each fiscal year. Of this \$50,000,000 collected, 30% is distributed to local governments based on the local road and street formula and 30% is distributed to local governments based on the motor vehicle highway formula. The remaining 40% is distributed to the Indiana Department of Transportation. Distributions to local governments are made on the fifth day of the

succeeding month in which they are collected. {IC 6-6-1.1-801.5}

The state retains a small portion of the funds designated by law for local government to use for cash flow purposes on federal highway grants to local jurisdictions and to fund certain services provided for the benefit of local road and street departments.

The above represents the major sources of state-generated taxes and revenues regularly distributed to counties on a formula basis. There are other state-distributed revenues, such as the hazardous waste disposal tax. However, the amounts of these receipts are usually minimal and their distribution tends to be sporadic.

- **Gaming Funds.** \$33 million is distributed each year. Money is divided by local units based on population. Money is delivered to the county auditor for distribution between July 1 and August 15 each year.
- **Other State Funding.** In addition to the above formula-driven distributions, state money is also available to counties and other local governments as grants-in-aid for special projects and needs. Sometimes the money is derived from the state revenues, and in other cases, it is from federal funds that are distributed to the state for distribution to local governments.

The state also provides direct funding for the court system. This funding is in addition to the county's contribution to the court system.

## Federal Funding

### *Grants*

Federal grants can be divided into two basic types: block grants and categorical grants.

The difference between the two is primarily the amount of discretion the local government has in spending the money.

### ***Block grants***

Block grants are the most versatile of the federal grant programs. While the use of block grant money is restricted, the restrictions are usually in the form of broad guidelines. The recipient county is relatively free to determine the specific programs within a broad grant area that will best address the particular problems of the county. The Community Development Block Grant ("CDBG") is a common type of block grant program. The Aid to Families with Dependent Children ("AFDC") program was converted to a block grant program by Congress in 1996. Many changes were made in the program and it is now referred to as Temporary Assistance to Needy Families ("TANF").

Some **categorical grants** provide funding while others provide operational assistance. There is limited local discretion as to the purposes for which these grants may be applied. Most categorical grant programs are the result of federal legislation in response to a particular problem or situation of national concern. Examples of categorical grants include airport improvement grants and highway safety programs for local police departments.

Another important source of federal money is the **Title IVD Child Support Enforcement Program**. This "incentive" money is distributed to counties based on the number of child support cases processed. One third of the money is distributed to the operating budget of the prosecutor. The remaining two thirds is distributed evenly to the state, the operating budget of the county clerk's office and the county general fund.

The best source of information about federal programs is the **Catalog of Federal Domestic Assistance**. Congressional field offices can also provide useful information and assistance. Another source of information is a regional planning agency. Numerous state agencies serve as conduits for federal and/or state funds. The Indiana Department of Transportation (INDOT) and the Indiana Economic Development Corporation (IEDC) are two such agencies with numerous funds available for county programs.

### ***Other Financial Sources***

There is insufficient space in this handbook to discuss in detail debt as a source of revenue. However, the following is a general discussion of short-term borrowing, inter-fund loans and transfers, and long-term borrowing.

### ***Debt Funding***

Debt funding is the borrowing of money by the county. Local government units are authorized to borrow to finance almost any legitimate governmental purpose, provided there is a reliable source of revenue to make timely repayment. In general, long-term debt is used for capital expenditures and short-term debt is used to cover operating expenditures.

**Short-term borrowing** usually covers an inadequate operating balance. A county may issue tax anticipation warrants to pay current operating expenses. Tax anticipation warrants may not be issued in an amount greater than anticipated, unencumbered property tax distributions and must be repaid when the county receives the tax distribution. Tax anticipation warrants are issued when bills are due prior to the semi-annual distribution of property tax revenues. {IC 36-2-6-18}

If a county has a large, one-time expenditure, it may determine that it is better to borrow in order to maintain a stable tax rate rather than to levy a large, one-time property tax increase. Under IC 36-2-6-18(d), the loan must be repaid within five years or less and may not exceed 5% of the county's total current year tax levy less any amount levied to pay debt service.

An **inter-fund loan** is the temporary transfer of money from one county fund to another. {IC 36-1-8-4} Although transfers are not limited to the various cumulative funds, cumulative funds are a common source for inter-fund loans. The county council must adopt an ordinance or resolution specifying the amount of the transfer and the time when the original fund is to be repaid, which must be prior to the end of the budget year. However, if an emergency occurs, the county council may adopt an ordinance extending the time of repayment for a period of up to six months beyond the end of the current budget year. The council must forward a copy of the ordinance to the State Board of Accounts and the Department of Local Government Finance. {IC 36-1-8-4(b)} An inter-fund loan may be made only from money derived from county revenues. Money from the federal or state government or from a private source that is dedicated to a specific purpose, may be transferred to another fund.

Inter-fund loans are an easy way to borrow money in the short term. They can be accomplished by a relatively simple act of the county council. They do not entail interest payments or result in substantial extra record-keeping and administrative costs. The only cost of an inter-fund loan is the loss of investment income from the transferring fund.

Counties may also make permanent transfers from one fund to another. By ordinance, a transfer must be made at a public meeting and certified to the county auditor who must report the transfer to the Department of Local Government Finance. {IC 6-1.1-18-6}

**Long-term borrowing** is accomplished through the issuance of bonds or the execution of a lease agreement (“debt obligation”). There are three basic types of bonds that may be issued, depending on the source of revenue that is used to repay them. They are:

- A **general obligation bond** pledges the full faith, credit and taxing power of the county. A county may not issue general obligation bonds to finance current operating expenses or to finance the construction of roads. The Indiana Constitution (Article 13) limits the total amount of outstanding general obligation indebtedness to 2% of the total assessed value of all taxable property in the county.
- A **revenue bond** is repaid from the revenue of the project that is financed. Such revenues involve service or user charges. Revenue bonds are an obligation only against the particular revenue of the project and not against the taxing power or any other revenues or funds of the county. Even though tax increment financing (“TIF”) bonds issued under IC 36-7-14 (or IC 36-7-15.1 in Marion County), are repaid from property taxes, they are considered revenue bonds. That is because they are payable only from property taxes generated by the project. They are collected on the assessed value

growth of property in the area where the project is located.

- An **income tax revenue bond** is payable from the various local option income tax revenues. In some circumstances, income tax revenue bonds may count against the county's 2% constitutional debt limitation.

In addition to bonds, a county may execute a lease agreement that is payable from any of the above revenue sources.

In addition, bonds may be issued or leases executed that are payable from various combinations of the above sources of revenue. For example, TIF bonds or revenue bonds may be issued with property taxes as the secondary source of repayment, if the primary source is insufficient. Bonds may be issued to refund or refinance previously issued bonds or a lease may be executed to refinance or refund a previously executed lease. This is usually done to take advantage of declining interest rates.

Bonds also may be issued or leases executed by a special taxing district in the county, which has its own statutory debt limitation. A special taxing district, such as a flood control district, park district or redevelopment district has statutory authority to issue general obligation bonds pledging the county's ability to tax the property within the district. Such debt is not included in the county's debt limit. A special purpose corporation, such as a library {IC 20-14-10}, or a county airport {IC 8-22-3} is also permitted to exercise independent bonding authority up to 2% of its assessed valuation.

A special assessment is authorized by statute in order to finance a particular type of improvement constructed for the benefit of a

specific group or area. A special obligation bond based on a special assessment levy is commonly used for drainage projects {IC 36-9-27} and Barrett Law assessments are normally used for sidewalks, curbs and sewers. {IC 36-9-36}

A lease agreement (sometimes called a lease purchase or lease rental agreement) is another instrument that may be used for long-term borrowing. It allows an entity other than the county to own a facility and lease it back to the county. The county creates a not-for-profit holding corporation or a county building authority for the purposes of owning the facility and leases the facility back to the county. A lease, in general, is payable from the same revenue sources as bonds. A properly structured lease does not count against the constitutional 2% debt limitation of the county.

To issue bonds or execute leases that are payable from property taxes requires significant citizen input. After publication of the intent to issue bonds or execute a lease, a certain number of real property owners in the county may file a petition demanding that the bonds or lease be subjected to a petition and remonstrance procedure. If the petition is successful, the bonds or lease agreement is subject to the petition/remonstrance procedures under IC 6-1.1-20. If the number of persons who sign a remonstrance against the bonds or the lease is greater than the number who petition in favor of the bonds or the lease, the project is defeated and cannot be reintroduced for one year. {IC 6-1.1-20} Bonds or leases payable from property taxes are not subject to the petition and remonstrance procedures under any of the following conditions:

- They are used to retire existing obligations and there is a savings to the county.
- They are the result of a court order holding that federal law mandates the project.
- Their payments total \$2,000,000 or less.
- They use property taxes as a secondary source of repayment.
- {IC 6-1.1-20-1-1.1}

A temporary loan payable within five years is not subject to the petition/remonstrance provisions. {IC 6-1.1-20-1}

### ***Referenda for Capital Projects***

Capital projects above certain cost thresholds must be submitted to the voters for approval. The threshold for county projects is the lesser of \$12 million or 1% of the county's assessed value. If the voters in the county vote in favor of the project then the cost will fall outside of the property tax caps, meaning that the portion related to the project of a property's tax levy above 1, 2, or 3% of assessed value (depending of property classification) may be collected.

### ***Investment Income***

The county may often have on hand money that it does not need for current expenditures. The county may invest these funds to earn interest. Investments of public funds are limited by IC 5-13 and include: securities backed by the full faith and credit of the United States Treasury or guaranteed by the United States Treasury, a federal agency or instrumentality or a federal government sponsored enterprise; discount notes issued by a federal agency or instrumentality or a federal government sponsored enterprise; or repurchase

agreements as defined under IC 5-13-9-3. Investment policy is based on the earning potential of the investment, the amount of money available and the time period that the money is available.

- **Local Board of Finance**

Each county has a Board of Finance per IC 5-13-7. In all counties except Marion, the members of the County Board of Finance are the County Commissioners and the County Treasurer. The board has supervision of the revocation of public depositories for all public funds of the county. In Marion County, the members of the Local Board of Finance are the county treasurer, the county auditor, the county assessor, the mayor of Indianapolis, the controller for Indianapolis and the president of the board of school commissioners. The members of the county board of finance serve without compensation other than the members' salaries as officers of the political subdivision.

Each local board of finance shall meet annually after the first Monday and on or before the last day of January. During the annual meeting, the board of finance shall do the following: elect from the board's membership: a president and a secretary. A majority of the members of each board of finance constitutes a quorum for the transaction of business. During the annual meeting, the treasurer shall make a written report to the investing officer's local board of finance, summarizing the political subdivision's investments during the previous calendar year. The report must contain the name of each

financial institution, government agency or instrumentality, or other person with whom the political subdivision invested money during the previous calendar year.

Each board of finance shall hold additional sessions whenever necessary to discharge its duties and to accomplish the purposes of this chapter. The president of each board shall convene the board whenever requested to do so by one of the members, or whenever necessary to perform the duties imposed by this chapter. All meetings of the boards of finance must be open to the public, and the records of the boards shall be subject to public inspection in accordance with IC 5-14-3 and IC 5-15-2, respectively. The secretary of each board shall keep a record of the proceedings, which shall be approved and signed by the president of the board and attested by the secretary. A local board of finance shall be known by the name "The Board of Finance of \_\_\_\_\_", inserting the name of the proper political subdivision, and may sue and be sued in the board's name in any action and in any court of competent jurisdiction.

### ***Miscellaneous Revenue***

In addition to the foregoing revenue sources, counties may also receive payments for contractual services rendered, fees, user and service charges, fines and judgments, gifts and bequests and revenue from the sale or lease of county property.

Counties may charge user fees, license fees, permit fees, etc. There are numerous statutes that prescribe a specific procedure

for enacting fees and sometimes even prescribe the amount of the fee. If there is a specific statute, the statute must be followed. In the absence of a specific statute, a fee for a service performed by the county may be established, but the fee must be reasonably related to the cost of the service provided. In essence, a county may establish a charge for a service, as long as the charge does not exceed the cost of providing the service. {IC 36-1-3-8}

The following are specific statutes governing user fees for certain services: recording fees {IC 36-2-7-10}, parking fees {IC 36-9-12}, sewer charges {IC 36-9-23-25}, and parks and recreation fees. {IC 36-10-3-22 and IC 36-10-4-16}

## **Financial Allocation**

Financial allocation or "budgeting" is central to the entire system of county finance.

To better understand the budget process, it may help to divide the process into two phases: (1) the process of reaching agreement on budget policies and priorities (the budget process); and (2) the preparation of the budget document. While the preparation of the budget document is primarily controlled by state law, the process for deciding budget policies and priorities is mainly left to the discretion of local officials.

### ***The Budget Process***

Because the budget process is, in part, a political process, there is no single best way to conduct it. The process differs according to the political, managerial and financial perspectives of the elected and appointed public officials of the county. Because there are different ways to design a satisfactory budget process, there are decisions to be

made not only about the substance of the budget but also about the steps involved in reaching agreement on its contents. In order to develop a workable budget, most counties find it necessary, either informally or formally, to expand on the basic budgeting steps required by statute.

A county budget is organized into fund accounts that separate receipts and expenditures by source, purpose, function and organizational unit within the county. When the term "fund" is used, it means the various accounts that directly receive taxes or other revenues (e.g., the motor vehicle highway fund) or those accounts through which this money is expended (e.g., the general fund). In this context, each fund is considered a separate account within the budget, whether for receiving or for spending local money. Together all of the funds comprise the overall financial and operational plan of the government, that is, they make up the budget.

While each fund is considered a separate account, eventually they all come together as a whole. This happens on several occasions. The first of these occasions occurs when the local government official attempts to estimate expenses. The second is when he or she estimates budget revenues.

From a budgetary standpoint, funds may be either reverting or non-reverting. Reverting funds are those that have an appropriation that reverts or is turned over to the fund from which it came at the end of a budget cycle. Non-reverting funds are similar to savings accounts. They can be used to accumulate funds to make major purchases. As a general rule, all funds revert, unless either the county specifically adopts an ordinance or a resolution to make a fund non-reverting or there is a specific statute. A self-insurance fund, by statute, is a non-

reverting fund, unless the county specifically adopts a resolution or ordinance to make it a reverting fund. {IC 36-1-8-6}

### ***Preparing Budget Documents***

It is important for all county officials to understand that the procedure for developing an annual county budget document is formal and governed by statutes. There is a strict timetable for adopting a budget. {IC 6-1.1-17}

The budget or fiscal year is based on the calendar year (January through December). A budget estimate of expenditures for the next budget year must be prepared for every office, board, commission or department of the county starting in June of the current year. These budget estimates are prepared on forms prescribed by the Department of Local Government Finance and approved by the State Board of Accounts. The forms are divided into four major subject classifications of expenditures: (1) personal services; (2) supplies; (3) other services and charges; and (4) capital outlays. Estimates of miscellaneous revenue (non-property tax revenue), must be prepared for each separate fund maintained by the county.

The county auditor usually distributes budget estimate forms by late June and must distribute assessed value estimates by August 1 to the appropriate elected officials or department heads. Boards or commissions, such as a parks and recreation board, must also submit budget estimates for the functions under their authority if expenditures of county money is involved. In addition to being included in the budget estimate, each officer, board, commission, and agency of the county must file a statement with the auditor on or before July 1 of each year detailing the positions and amount of salary, or rate of wages, to be requested in the budget. The auditor

presents these statements to the board of commissioners at its July meeting, and the board makes its recommendations on these requests to the county council before August 20. {IC 36-2-5-4} The commissioners' recommendation is not binding; the final decision rests with the council.

The county council has the exclusive authority to approve and adopt the proposed budget as presented by the auditor at the council's annual budget meeting. With the exception of Marion County, the council must adopt the annual budget, tax rate and tax levy no later than September 20. It must publish notice and hold a hearing on the budget at least 10 days prior to the adoption of the budget, rate and levy. {IC 6-1.1-17-5} The council may accept the budget estimates as presented by the auditor or it may reduce the entire budget or any part of it. The council may also increase any part of the budget or include new appropriations, but to do so requires at least a three-fourths (3/4) vote of the council. {IC 36-2-5-11} However, the council may not adopt a budget or tax levy that is in excess of the amounts that were originally published. {IC 6-1.1-18-1}

Changes in the budget may be made by either: (1) amending the ordinance presented by the auditor; or (2) substituting a new ordinance. At the same budget meeting, the council must also pass an ordinance fixing the salaries and wages for county employees. {IC 36-2-5-11 }

Following the council's adoption of a budget, the auditor must submit the budget to the county board of tax adjustment, if the county has one. If the county does not have a board of tax adjustment, the auditor performs the statutory duties of the board of tax adjustment. The board of tax adjustment or the auditor is responsible for verifying



that tax rates and levies are within the maximums prescribed by state law. To bring rates and levies into compliance with the property tax controls, the tax adjustment board may revise or make reductions to the county budget, but it may not increase a budget, rate or levy. {IC 6-1.1-17-6}

Either the county or ten taxpayers in the county may appeal the actions of the board of tax adjustment to the Department of Local Government Finance (DLGF). Even if an appeal is not filed, the DLGF will review the budget and may make changes to conform it to state law. After publication of notice five days prior to a hearing, the DLGF may revise or reduce a budget, tax rate or tax levy of a county. The DLGF however may increase a tax levy in excess of the amount originally fixed by the county only in very limited circumstances. {IC 6-1.1-17-16(h)} Prior to making a final change in a budget, the DLGF must give notice to the county of the change(s) it expects to make and provide the county with an opportunity to respond. A county has two weeks from the receipt of the notice to respond in writing. Following completion of the review and appeal process, the DLGF certifies to the county auditor the final approved budget, tax levy, and tax rate by February 15. The county does not have a final budget until all of these steps have been completed. {IC 6-1.1-17}

### ***Revisions of the Budget***

It is best not to change horses in midstream. However, this principle does not apply to budgets, which are of necessity based on estimates. There may be occasions when the approved budget proves unsatisfactory during the course of the year. The law recognizes this possibility and provides for at least two types of corrective measures: intradepartmental transfers and additional appropriations.

### ***Intradepartmental Transfers***

A county may make adjustments within the budget for a single department or office fairly easily by transferring part of the appropriation from one budget classification to another. This transfer of appropriations within the department or office can be made by ordinance at any regular county council meeting. It does not require special public notice, public hearing, or outside review and approval. However, the auditor must report the transfer to the DLGF. {IC 6-1.1-18-6}

### ***Additional Appropriations***

A change in the adopted budget that involves either appropriation of previously unappropriated money or a reallocation of appropriations from one department or distinct purpose to another may also be accomplished by the additional appropriation process. The additional appropriation procedural requirements closely parallel the original budget process. {IC 6-1.1-18-5} When the county council proposes to make an additional appropriation, it must hold a public hearing and publish notice of the hearing at least ten days in advance. If the appropriation is from a fund that receives distributions from the motor vehicle highway account, the local road and street account or property tax revenues, the auditor must certify the proposal to the DLGF to determine if there are sufficient revenues available. The DLGF must notify the county auditor of its determination within 15 days of receiving the proposal. The DLGF must specify to the county its reasons for disapproval. The county may request a reconsideration with 15 days of the receipt of the notice from the DLGF.

## **Financial Utilization**

This section discusses some of the procedures a county must follow to spend its financial resources to maintain county operations and accomplish its objectives.

### ***The Appropriations-Expenditure Relationship***

The county budget and the appropriations made in accordance with it are formal and legal proceedings and they govern the expenditure of money throughout the budget year. For the most part, it is a criminal violation for a county official to pay money belonging to the county, to attempt to incur any bill or contractual agreement or, in any way, to obligate money belonging to the county, unless there has been an appropriation made for that purpose.

However, there are instances when state law explicitly allows payment without an appropriation, such as, an expenditure from the cumulative bridge fund for the purpose of constructing, maintaining or repairing bridges. {IC 8-16-3-3} Even though, state law allows an expenditure without following the formal appropriation procedure, the county must nevertheless determine if there are sufficient unencumbered funds to cover the expenditure.

It is the duty of the county auditor to keep a ledger of each county fund and a separate account for each appropriation or disbursement for each office and/or department. Disbursements or encumbrances, when made, are credited against the relevant appropriation to keep track of the unexpended balance.

### ***Purchasing and Payment Procedures***

Most purchases and payments made by the county for services or goods, except wages and salaries of county employees and certain regular payments such as bills for utility

services, are initiated by issuing a purchase order on a form prepared by the county.

Only the board of commissioners and various county boards and commissions specifically empowered by law to do so are authorized to make purchases for the county either directly or by contract. This power may be delegated. In many instances the county commissioners have delegated this authority to other elected or appointed officials or department heads. In some counties, a separate purchasing department has been established to handle all county purchases, with all officials requisitioning necessary supplies and equipment from the purchasing department.

Some purchases may be made on the open market. In general, purchases totaling less than \$25,000 may be made without any formal quote or bid procedures. Purchases totaling \$25,000 or more but less than \$75,000 may be made by accepting three or more quotes. Generally, for all purchases of materials within a line or class of materials totaling over \$75,000 for the year, the county must follow formal bidding procedures. (Specific details of the bidding and purchasing laws, as well as sample forms and ordinances, are covered in the AIC publication *Local Government Purchasing and Public Construction, June, 1998*).

Actual payment of county money, including county payroll checks, is in most instances based on the submission of a bill or invoice (claim) to the auditor. A bill or invoice may be used in lieu of the claim form prescribed by the State Board of Accounts. The claim must show the type of service or goods rendered, by whom, when and depending on the case, must detail appropriate costs, such as rate per hour, price per pound, etc. The claim must be approved and signed by the

official responsible for the purchase and receipt of the goods or services in question. Claims are certified by the auditor to verify correctness and are presented to the appropriate board or official for allowance (approval for payment). {IC 5-11-10}

Most claims must be approved by the board of commissioners. The governing boards or commissions of a number of county agencies, such as the county hospital, the county aviation department, and the parks and recreation department may allow their own claims, without submission to the commissioners. Judges also may allow all court-related claims, including the salaries of court personnel. Payments for the redemption of and interest on indebtedness, funds due the state or other governmental units by law and employee withholding pay (except for the county's share of contributions) may be made by the auditor without approval by the county commissioners.

### ***Required Financial Statements***

At the close of each calendar month, the auditor must prepare a financial statement, showing the financial transactions for the month and year to date for each fund. The county treasurer is also required to independently prepare a monthly financial statement on the same form. The two statements must be reconciled.

At the close of the calendar year, the auditor must prepare an annual financial statement and submit it to the board of county commissioners for approval at its second regular meeting of the year. The statement must include the name and compensation paid to each county officer, deputy and employee. This is the annual financial statement of the board of county commissioners. The board must post the statement at the courthouse door and at two

other places in the county, as well as publish it once in accordance with IC 5-3-1. {IC 36-2-2-19}

The county auditor must also prepare and file an annual financial report with the State Board of Accounts. The report is prepared on forms furnished, by the State Board of Accounts and must be filed on or before January 30. One copy of the published annual financial statement must accompany the report. County financial transactions are subject to annual audits by the State Board of Accounts. {IC 5-1 1-4}

# Chapter 6

## MEETINGS AND RECORDS

### County Commissioner's Meetings

The county executive must meet at least once each month and as needed at other times to conduct all necessary business. {IC 36-2-2-6} Regular meetings are scheduled at the first meeting of the commissioners each January. Special meetings may be called by any commissioner or by the county auditor on six days notice. {IC 36-2-2-8}

Two commissioners comprise a quorum, as well as the necessary majority to pass an ordinance or resolution. If only two commissioners are present at a meeting and they disagree on a question being considered, the matter under consideration must be continued until the next meeting. {IC 36-2-4-6}

Unanimous consent is required to pass an ordinance on the same day or at the same meeting at which it is introduced, except for amendments to zoning ordinances and ordinances of the county council for additional appropriations. {IC 36-2-4-7} Otherwise an ordinance requires two readings at two separate meetings. County commissioners may adopt their own rules of procedure that are in addition to those required by statute, such as requiring additional ordinance readings.

Ordinances, orders and resolutions are considered adopted when signed by the president of the county commissioners. Generally, an ordinance need not be published as a legal notice, unless it

prescribes a penalty or forfeiture or there is a specific statute requiring publication. In the case of a penalty or forfeiture, prior to the effective date the ordinance must be published once each week for two consecutive weeks. {IC 36-2-4-8}

The county auditor acts as the clerk of the board of county commissioners and is required to attend all meetings of the commissioners and keep the minutes. {IC 36-2-2-11}.

### County Council Members

The county council is required by statute to hold only three meetings a year: one in January for organizational purposes; one to hold a hearing on the budget (except in Marion County); and one in September to adopt the county's budget and set tax rates. (In Lake and St. Joseph Counties, the council is required to hold regular monthly meetings that do not conflict with the meetings of the board of commissioners.) Most councils find it necessary to meet more frequently. The council president, the auditor, or the majority of council members may call a special meeting. The calling of a special meeting requires written notice of the meeting to the council members at least 48 hours in advance. {IC 36-2-3-7}.

Like the county commissioners, the council has the power to establish rules of procedure for the conduct of its business. A quorum of the council, which is defined by the statute as a majority, must be present at a meeting. However, the council may, by a two-thirds

(2/3) vote, adopt a rule specifying that a certain number of members greater than a majority constitutes a quorum. {IC 36-2-4-3}

Generally, a majority vote is required to pass an ordinance. However, there are exceptions. For example, a county employee's salary or the number of employee positions may be changed during the year only upon a two-thirds (2/3) vote of the council. {IC 36-2-5-13} Budget appropriation ordinances that are in excess of the appropriation recommended to the council require a three-fourths (3/4) vote. {IC 36-2-5-11}

The county council is required to elect a president and president pro tempore at its organizational meeting. {IC 36-2-3-6(a)} An ordinance passed by the council must be signed by the presiding officer of the council. {IC 36-2-4-8(a)} The county auditor is the clerk of the council and responsible for recording the minutes and votes. The council's records are required to be kept in the auditor's office. {IC.36-2-3-6} The council may employ legal counsel and administrative personnel necessary to assist it in its duties {IC 36-2-3-6(d)}, as well as hire or contract with persons to assist in the development of salary schedules. {IC 36-2-5-3(a)(4)}

## Open Door Law

Any meeting of the county commissioners, county council or any other public agency or board is open to the public by virtue of the Indiana Open Door Law. {IC 5-14-1.5} Any agency that is subject to budget review by the Department of Local Government Finance or audit by the State Board of Accounts is also subject to the Open Door Law.

As defined in the statute, a meeting is a gathering of a majority of the governing body for the purpose of taking official action on public business. Gatherings of a social or chance nature and not intended to avoid the statute, an on-site inspection of any project or program, traveling to and attending meetings of organizations devoted to the betterment of government or a caucus meeting are not considered to be meetings. {IC 5-14-1.5-2} "Official action" is considered to be:

- Receiving information.
- Deliberating.
- Making recommendations.
- Establishing policy.
- Making decisions.
- Taking final action.

The governing body must give public notice of meetings 48 hours prior to the meeting (excluding holidays, Saturdays and Sundays). Notice is given by: (1) posting a copy of the notice at the office of the governing body, if there is one, or at the building where the meeting is to be held {IC 5-14-1.5-5}; and (2) mailing or delivering notice to all news media that delivered a written request to receive such information to the county by January 1 of that year. The board of commissioners and the county council may establish their respective schedules of meetings once each year. If they do, they are required to give notice of this schedule only once a year. If the schedule is changed, the governing body must give notice as above. The calling of a special meeting requires specific notice 48 hours prior to the meeting in the same manner that notice of a regularly scheduled

meeting is given. The notice for special meetings is the same as that for regular meetings.

The specific 48-hour requirement may be waived for a meeting called to deal with an emergency (e.g., actual or threatened danger to person or property or actual or threatened disruption of governmental activity). The notice must be posted as soon as possible and news media organizations must be notified at the same time and in the same manner as the members of the body that is meeting are notified. {IC 5-14-1.5-5(d)}

The governing body may not take a secret ballot {IC 5-14-1.5-3}, nor may it prohibit cameras or tape recorders at public hearings.

### ***Special Rule for Commissioner's Meetings***

Because most boards of county commissioners exercise both legislative and executive powers, public notice of meetings of the board of county commissioners is not required in certain circumstances. When meetings are held solely to receive information or recommendations in order to carry out administrative functions or confer with staff members on matters relating to the internal management of the county, public notice is not required. {IC 5-14-1.5-5(f)} This exception is to the notice requirement only, commissioners must still admit the public to such meetings.

### ***Executive Sessions***

Executive sessions are an exception to the general rule of open meetings. In general, an executive session is a meeting, which does not result in a final decision. Executive sessions may be held only:

- When authorized by federal or state law.

- For discussion of strategy with respect to: collective bargaining; initiation of litigation; or litigation that is either pending or has been threatened specifically in writing; the implementation of a security system; or the purchase of real property up to the time a contract or option to purchase or lease is executed by the parties. However, all such strategy discussions must be necessary for competitive or bargaining reasons and may not include competitive or bargaining adversaries.
- Interviews with industrial or commercial prospects or their agents by the economic development commission.
- For receipt of information about and interviews with prospective employees.
- With respect to any individual over whom the governing body has jurisdiction: to receive information concerning the individual's alleged misconduct; and to discuss, prior to any determination, that individual's status as an employee.
- For discussion of records classified as confidential by state or federal statute.
- To discuss a job performance evaluation of individual employees. This does not include discussions about salary, compensation or benefits of employees during the budget process.
- To narrow a list of prospective appointees to three persons when

considering the appointment of a public official.

- To prepare or score examinations used in issuing licenses, certificates, permits, or registrations under IC 15-5-1.1 or IC 25. {IC 5-14-1.5-6.1}
- Meetings by governing bodies with employee unions or meetings involving representatives of either party for the purpose of collective bargaining or discussion are subject to the following rules:
- Any party may inform the public of the status of collective bargaining or discussion as it progresses, by releasing factual information and expressing opinion that is based on factual information.
- If a mediator is appointed, any report he or she may file at the conclusion of mediation is a public record that is open to public inspection.
- If a fact finder is appointed, any hearing held must be open at all times to the public.
- Any findings and recommendations made by a fact finder are public records open to public inspection. {IC 5-14-1.5-6.5}

### ***Agendas***

- The Open Door Law does not require agendas. However, it does require that if a written agenda is used, it must be posted at the entrance to the location of the meeting prior to the meeting. {IC 5-14-1.5-4} There is, however, no requirement to send an agenda along with the meeting notice to the media or to post the agenda in

advance. The purpose of an agenda is to guide public officials in the conduct of the meeting and to inform the public. Deviations from an agenda that are consistent with this general purpose and any pertinent local rule do not conflict with the Open Door Law.

### ***Memoranda / Minutes***

A memorandum (or minutes) must be kept at each meeting and executive session. The written record must include:

- The date, time and place of the meeting.
- The members of the governing body present and absent.
- The general substance of all matters proposed, discussed or decided.
- A record of all votes taken (by individual, if there is a roll call vote). {IC 5-14-1.5-4}

There is no requirement to keep minutes in addition to this, but if minutes are kept they must be made available for inspection and copying. The written record of the meeting must be made available within a reasonable period of time. Although "reasonable" is subject to some interpretation, the practice of not releasing the memorandum until it is accepted and approved by the governing body at the next regular meeting is not considered reasonable.

To avoid duplication of effort and still comply with the law, a suggested procedure is to prepare a memorandum of each meeting making it available within one or two days. The memorandum may also be adopted as the official minutes at the next meeting. (The memorandum must include

the items mentioned above, and may include any other details desired by the governing body.)

There is no requirement to mail the memorandum to the media. The county may charge a reasonable amount to photocopy minutes when they are requested.

All final action must be taken at a meeting open to the public. A governing body may not conduct an executive session during a meeting, nor may a meeting be recessed and reconvened in order to circumvent the law.

### ***Penalties***

Any citizen may file a suit to void any decision that is made in a meeting that is not held in accordance with the Open Door Law. The citizen does not need to show harm, only that the law was not followed. Such a suit must be filed prior to the delivery of any warrants, notes, bonds, or obligations or within 30 days, whichever is earlier.

If the court rules that the county violated the law, it may void any actions or decisions made at the meeting. If the person bringing suit prevails and the court finds the county's violation was knowing and intentional, the court may award reasonable attorney's fees, court costs and other reasonable expenses of litigation. If the county prevails and the court finds that the suit was frivolous and vexatious, the court may award reasonable attorney fees, court costs and other reasonable expenses of litigation. {IC 5-14-1.5-7}

### **Public Records**

Any county document or record is an open record unless it is specifically exempted or classified as confidential by state or federal law. The following sections are an overview of provisions that are most relevant to

county government. Knowing and understanding the access to public records statute {IC 5-14-3} is vital to the job performance of any county official who has record keeping responsibilities. Under IC 5-14-3-3.6, counties have authority, but are not required, to permit enhanced access to public records through computers or other electronic devices. Counties may make this access available through the internet commission established under IC 5-21-2.

### ***General County Records***

The definition of a public record is broad. Any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, used, or filed with a county and is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics is a public record under IC 5-14-3-2. The general public may inspect and copy any record unless there is a specific exception in state or federal law. However, there are certain records that a county may not disclose unless required to do so under state or federal law or under court order. Those records are as follows:

- Records declared confidential by state statute, official rule of a state agency or rule of the Indiana Supreme Court.
- Records required to be kept confidential by federal law.
- Records containing trade secrets.
- Confidential financial information, unless the information was filed with or received by the county pursuant to state statute.



- Patient medical records and charts, unless released by the patient.

A county has discretion whether to disclose the following records:

- Law enforcement investigatory records, except those specifically made public under IC 5-14-3-5.
- The work product of an attorney who is officially appointed to work for the county.
- Test scores if the person is identified by name and has not consented to the release.
- Test questions, scoring keys and other examination data used in an employment examination.
- Records relating to negotiation of the economic development commission with industrial, research or commercial prospects if the records were created during the negotiation process.
- Intra-agency or interagency advisory or deliberative material, including material developed by a private contractor that are expressions of opinion or are of a speculative nature and communicated for decision making purposes.
- Diaries, journals or other personal notes.
- Certain personnel records of employees.
- Administrative or technical information that would jeopardize a recordkeeping or security system.
- Records specifically prepared for discussion in an executive session.

- Computer programs, codes and systems.
- Records specifically prepared for discussion or developed during executive session under IC 5-14.-1.5-6-1.
- Under certain conditions, the identity of a donor of a gift to a public agency.

Certain personnel information must be released on request and other personnel information may be retained as confidential at the discretion of the county. Information that must be provided includes:

The name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency, information relating to the status of any formal charges against the employee, and information concerning disciplinary actions in which final action has been taken and that resulted in the employee being disciplined or discharged. {IC 5-14-34(b)8}

Other information that may be compiled and maintained about employees can be withheld from the general public, but must be provided to the employee or his or her representative. Information collected about applicants is subject to the same guidelines as information that is collected about public employees. {IC 5-14-3-4}

### ***Records Management***

The increased procedural requirements with respect to public records, necessitates sound records management techniques. In many

cases, formal policies need to be adopted and followed where informal procedures were satisfactory in the past. Officials should consult other references for a complete discussion on records management. There are several aspects of records management that have legal ramifications.

County officials have the explicit duty to protect public records from loss or damage {IC 5-14-3-7}, and may adopt reasonable rules with respect to public records access that prohibit interference with regular functions of the county. Procedures should be adopted to insure that individuals who review or copy records do not destroy, mutilate, or remove the records. The specific technique necessary to achieve security will vary with the size of the county, the layout of the office, the number of employees, the number of requests, the nature and form of the records and other factors.

Individuals have the right to copy any record to which they have legal access. Counties may charge a copying fee if a fee schedule is properly adopted. Any fee charged may not exceed the actual cost of reproducing the copy. The cost of searching, locating, verifying and filing the record cannot be considered when calculating the cost of reproducing the record. The individual may also manually transcribe any information. {IC 5-14-3-8}

Officials must separate and provide any disclosable information from any non-disclosable information in a record that contains both. {IC 5-14-3-6} Forms and procedures should be developed or modified to minimize difficulty in complying with this requirement. To what extent it is cost-effective to undertake changes in filing systems, forms and procedures, depends on

many of the factors mentioned with respect to record security.

Some of the public record requirements are modified in the case of computerized records. Counties that use computers should consider public record requirements when purchasing or acquiring data processing equipment or systems. The basis for fees counties may charge is also different for computerized records. Counties may charge a fee for duplicating computer tapes, computer disks, optical disks, microfilm or similar media. The county legislative body must authorize and set the fee by adopting an ordinance. The fee may not exceed the sum of: (1) the county's direct cost of supplying the information; and (2) the standard cost for selling the same information to the public in the form of a publication, if the county has made that information available through a publication. A county is not required to reprogram a computer system to provide enhanced access or access to a governmental entity by an electronic device.

Public records subject to the official records act {IC 5-15-6} can only be destroyed under the procedures of that act. There are a myriad of state and federal statutes requiring the retention of specific records for varying periods of time. Local public records commissions have the responsibility to determine when records that are of no official or historical value may be destroyed. {IC 5-15-6-3(b)}

### ***Access Denial Procedure***

Individuals who desire to inspect a public record must "identify with reasonable particularity" the record requested. While the law does not define "reasonable particularity", it is clear that county officials are not required to allow individuals to search randomly through public records.

Once a record is requested, the county must furnish the record unless there is a specific statutory provision to the contrary. Counties may require that a request be in writing or on a form designated by the county. {IC 5-14-3-3}

Counties may also designate employees or officials who have the duty to determine whether a record should be released. Citizens who are denied the right to see a record by an official who has been assigned that duty may immediately file an action in circuit or superior court to determine if that denial was legitimate.

If someone other than a properly designated official refuses to release a record, the county has 24 hours to reconsider before the individual can file an action. All employees and officials should be aware that denying access may subject the county to litigation, so a timely decision is important.

If a person requests a public record by mail, the county has seven days from the date of receipt of the request to respond. If there is no response from the county in seven days, the request is considered denied.

If the person is physically present in the county offices and makes the request orally, the request may be denied orally. But, if the request is made in writing, the denial must be also made in writing and must contain the specific reason for the denial and the name of the official making the denial.

The burden is on the county to prove that the record does not have to be released. If the court finds that the county intentionally violated the statute, the court may award reasonable attorney fees and court costs. The court may also award attorney fees if it finds that the lawsuit was frivolous or vexatious. {IC 5-14-3-9}

# Chapter 7

## GETTING A GOOD START

### **For the Newly Elected Official**

Beyond an awareness of what the state laws concerning county government involve, you will obviously need to deal with a number of additional concerns during your term in office. These concerns will most often relate to your own office and to your own duties. It is important to keep in mind that as a county official, you are a member of a team. The success of county government during your term in office depends on how well the team functions. Each team member has specific duties and responsibilities.

To be successful, you must become familiar with the roles and responsibilities of the other elected officials within the county. You must establish an atmosphere of mutual cooperation. The shortest road to failure, both in county government and in the political arena, is to assume that your office is the most important one within the county and that other offices are expendable.

County government is a complex, and difficult operation. It involves delivering services that the private sector does not provide. You will find that the people who elected you assume that you are now an expert on all aspects of county business. Keep in mind that laws pertaining to county government change every year and that it is important to continue to educate yourself about those changes.

Look to other county elected officials, draw upon their knowledge when it is greater than yours, and provide them with knowledge

from your own area of expertise. Once you begin to do this, you will find that teamwork will evolve naturally as a necessary part of your role as a county official. It is important to remember that all elected county officials represent the same voters.

### **Utilizing the AIC**

The Association of Indiana Counties was formed in 1957, specifically to help coordinate the legislative goals of county government. Since that time it has become a full service association offering a number of services to Indiana's 92 counties.

The AIC is a non-profit association which is owned by the counties of Indiana. Membership is available to counties, but not individual officers. Funding for the AIC is derived through membership fees and other revenue sources. The board of directors, comprised entirely of elected county officials, is the governing body of the AIC. The president and the past president of each affiliate office serve on the AIC Board of Directors. In addition, the president and vice president of each of the six geographic districts serve on the board.

The executive director and the staff serve under the direction and at the pleasure of the board of directors. The service of the executive director and staff is directed by the needs of elected county officials. Remember to utilize the service of the AIC to get the most out of your experience as a county elected official. A summary of AIC services is as follows:

- Representing the viewpoint of counties to the Indiana General Assembly and state agencies.
- Disseminating various publications
- Training programs.
- Technical assistance.

The primary objective of the AIC is to represent and protect the interests of counties in the General Assembly. While there are a number of agencies and groups offering assistance concerning other facets of county government, the AIC is the only entity that represents the legislative needs of Indiana counties as a whole.

The information services provided by AIC take several forms, including the magazine, *Indiana News 92*, and legislative bulletins. In addition to these regular publications, the AIC maintains a library of resource material concerning most matters of interest to officials. These materials are available to members upon request and usually at no charge. Another major aspect of the service is the special information surveys that are conducted and compiled by the staff for use by members in planning and administration. The areas covered by these projects include the roster of officials and the annual *County Factbook*.

The AIC DIPLOMA program and other training sessions provide local government officials, and their appointees, with practical advice and information concerning matters of current interest. Typically workshop sessions deal with topics such as economic development tools, budgeting and finance, purchasing, human resources issues and leadership development. Also, regular informational programs are offered through the AIC regional district meetings, which

are held in the spring after the legislature adjourns.

The AIC's largest event is the Annual Conference which is held in the fall of each year. This conference is the largest annual gathering of county officials held in the state of Indiana. The conference provides a number of topical sessions, as well as the opportunity to network with a number of county officials from around the state.

Finally, the AIC offers technical assistance through its entire staff. Questions may be referred to staff members who will attempt to respond promptly and, if necessary, will visit the local official for field assistance. While the AIC staff cannot solve every problem or answer every question, it attempts to respond expeditiously to your inquiries and to assist you in your job as a county official.