

ARKANSAS COUNTY  
TREASURERS 2022  
PROCEDURES MANUAL



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## FOREWORD

This County Treasurer's procedures manual was compiled by the Association of Arkansas Counties staff and reviewed by AAC staff. It reflects the current law through the 2021 legislative session and includes a description of the duties, responsibilities, and procedures of the Treasurer's office. It is not to be construed as legal advice. It presents the law for your information and guidance but specific legal questions should be directed to your county attorney.

We hope this procedures manual will be of help to you as you do the day-to-day business of your county.

A handwritten signature in black ink that reads "Chris Villines". The signature is written in a cursive, flowing style.

Chris Villines  
Executive Director

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2021**

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# TABLE OF CONTENTS

	<u>Page</u>
Forward.....	i
Board of Directors and Staff .....	ii
Table of Contents.....	iii
CHAPTER 1	
Introduction to County Government .....	1
CHAPTER 2	
Duties of the Office .....	5
CHAPTER 3	
Timetable and Check-List .....	16
CHAPTER 4	
Records Retention Schedule.....	27
CHAPTER 5	
Description of Record File and Work Processes .....	31
CHAPTER 6	
County Lines Articles and FAQs.....	38
CHAPTER 7	
Attorney General Opinions.....	66
CHAPTER 8	
Treasurers' Commissions and Fees .....	69
Glossary of Terms .....	71
Security Agreement for Public Funds .....	72
Custodial Services Agreement .....	76
Certificate of Corporate Resolutions.....	79
Collateralizing Public Funds .....	80
Deposit Insurance for Public Funds.....	83
Example Bank Deposits Schedule .....	85
Example Bank Security Form .....	86
Example Bank Coverage Schedule .....	87

## Chapter One - INTRODUCTION TO COUNTY GOVERNMENT

County government is a political subdivision of the state. County government provides services to all of the citizens of the county, and every resident of Arkansas lives in a county. The services that every county must provide include: (1) the administration of justice through the courts; (2) law enforcement protection and the operation of the jail (3) real and personal property tax administration, including assessments, collection, and custody of tax proceeds; (4) court and public records management; and (5) the required services prescribed by state law provided through the various elected county officers or departments of county government such as providing and managing a county road system, elections and financial management just to name a few things. Counties may provide for the establishment of any service or performance of any function that is not expressly prohibited by law. These services and functions include, but are not limited to, things like agricultural extension services; community and rural development services; libraries; park and recreation services; emergency medical services; fire prevention and protection services; solid waste collection and disposal services; public health services; and any other services related to county affairs. ACA 14-14-802

County government elects nine executive officers and a countywide legislative body called the Quorum Court to provide these various services. The nine elected officials are county judge, sheriff, county clerk, circuit clerk, collector, assessor, treasurer, coroner and surveyor. Some counties combine two of these offices into one, such as county clerk/circuit clerk, sheriff/collector, or treasurer/collector. Also, not all counties elect a surveyor and in the counties that do elect them, this job is usually not a full-time position. The county legislative body is entitled the Quorum Court and is composed of 9-15 members called Justices of the Peace. These justices of the peace are district officers and not county officials because they represent a district within the county.

The chief executive officer for county government in Arkansas is the county judge. As chief executive, the judge authorizes and approves the disbursement of all appropriated county funds, operates the system of county roads, administers ordinances enacted by the quorum court, has custody of county property, accepts grants from federal, state, public and private sources, hires county employees except those persons employed by other elected officials of the county, and presides over the quorum court without a vote, but with the power of veto. ACA 14-14-1101 - 1102

All powers not vested in the county judge as the chief executive officer of the county shall continue to be exercised and administered by the county court, over which the county judge shall preside. The county court, in fact, is the county judge sitting in a judicial role.

The county court of each county has exclusive original jurisdiction in all matters relating to:

1. County Taxes: Including real and personal ad valorem taxes collected by county government. The county court's authority in this area includes jurisdiction over the assessment of property, equalization of assessments on appeal, tax levies, tax collections, and the distribution of tax proceeds.

2. Paupers: The court's jurisdiction includes all county administrative actions affecting the conduct of human services programs serving indigent residents of the county where such services are financed in total or in part by county funds.

3. Jurisdiction in each other case that may be necessary to the internal improvement and local concerns of the respective counties including county financial activities and works of general public utility or advantage designed to promote intercommunication, trade and commerce, transportation of persons and property, or the development of natural resources, which are not otherwise transferred to the county judges to be administered in an executive capacity.

4. The county court shall have all other jurisdiction now vested by law in the county court except with respect to those powers formerly vested in the county court under the provisions of Section 28 of Article 7 of the Constitution which were transferred to the county judge under the provisions of Section 3 of Amendment 55 to the Arkansas Constitution, (and those powers removed by Amendment 67 as they pertain to the apprenticeship of minors. ACA 14-14-1105

In addition to the duties of the county court, the county judge is responsible for coordinating the day-to-day inter-governmental relations between the various state and federal agencies operating at the county level. The judge must also apply for all federal and state assistance moneys for which the county is eligible, and appoints the members to all administrative and advisory boards in the county, some of which have to be confirmed by the quorum court.

The county sheriff is the sheriff of the courts, maintains public peace, and has custody of the county jail. As chief enforcement officer of the circuit courts, the sheriff's office, which includes the sheriff and deputies, is charged by constitutional and statutory laws with the execution of summons, enforcement of judgments, orders, injunctions, garnishments, attachments, and the making of arrests on warrants issued by the courts. The sheriff also opens and attends each term of circuit court, notifies residents selected to jury duty and assists in handling witnesses and prisoners during a given court term.

The sheriff, or a member of that staff, often prepares and assembles evidence of the Prosecuting Attorney's case against defendants charged with both felonies and misdemeanors. The sheriff also transports convicted prisoners and others declared by the court to the various penal and mental institutions of the state.

The sheriff in every county has the custody, rule, and charge of the county jail and all prisoners committed in his county (ACA 12-41-502). The sheriff shall be conservator of the peace in his county (ACA 14-15-501). It shall be the duty of each sheriff to quell and suppress all assaults and batteries, affrays, insurrections, and unlawful assemblies; and he shall apprehend and commit to jail all felons and other offenders (ACA 14-14-1301). The sheriff also works with the various local municipal law enforcement officials or other state and federal officials charged with law enforcement.

The county clerk is the official bookkeeper of county government and serves as the clerk for the county, quorum and probate courts.

As clerk of the county court, the clerk has the duty of keeping a regular account between the treasurer and the county. The clerk charges the treasurer with all moneys received and credits the treasurer with all moneys disbursed. In addition, the clerk keeps an accurate account of all financial transactions within the county and files all documents, vouchers, and other papers pertaining to the settlement of any account to which the county is involved. It is the responsibility of the county clerk to prepare all checks on the treasury for moneys ordered to be paid by the county court and to keep complete and accurate records of all these financial transactions ready for the court's inspection at any time (ACA 16-20-402). [An alternate method of the county treasurer issuing checks, allowed by ACA 14-24-204, is used by many counties.]

The county clerk shall serve, unless otherwise designated by county ordinance, as the secretariat of the quorum court. These duties involve keeping a complete permanent record of the proceedings of the Quorum Court including minutes, ordinances, resolutions and an index to provide easy access to the information. ACA 14-14-902 and 14-14-903

As clerk to the probate court, the clerk files all instruments making them a matter of record in decedent estate cases, and swears in all witnesses in contested estates. The clerk, also in this capacity, maintains all records relative to adoptions and guardianship cases within the county. The county clerk, or the clerk's designee, serves as the secretary of the Board of Equalization and records the minutes of their meetings (ACA 26-27-307). Also, if the clerk is the preparer of tax books for the county, the clerk is responsible for extending the taxes in the information provided by the assessor and the Board of Equalization. ACA 26-28-101 through 26-28-108

The clerk became the official voter registrar with the adoption of Amendment 51 to the Arkansas Constitution in 1966. The clerk maintains an accurate and up-to-date voter registration list within the office and stores the ballot boxes between elections. In addition, the clerk is the custodian of absentee ballots and is responsible for early voting. It is common practice in many counties for the county clerk to assist the county election commission in the

overall performance of the election process. With the increasing complexity of elections, however, there is an increasing trend towards the hiring of election coordinators to aid the county election commission and the county clerk in their respective election responsibilities. ACA 7-5-401 et seq.

The clerk issues marriage licenses (ACA 9-11-201), and keeps a record of all firms in the county which have incorporated (ACA 4-26-1201). The clerk issues special licenses allowing certain activities (ACA 26-76-102).

The circuit clerk is the clerk of the circuit court and juvenile court and usually acts as the ex-officio recorder of the county.

Unless otherwise provided by law, the county recorder is the circuit clerk of the county. In a county that under law has assigned the duties of the county recorder to the county clerk, all Code references to circuit clerk that concern recording functions shall mean the county clerk.

The administrative duties of the circuit clerk are to maintain a record of all proceedings of the circuit courts to enter docket number and name of the defendant and to prepare the dockets for these courts (ACA 16-20-102). The circuit clerk prepares summons, warrants, orders, judgments, and injunctions authorized by the circuit court for delivery by the county sheriff. The circuit clerk also maintains a file of all cases pending in either court, as well as a record of all past court cases and their disposition (ACA 16-20-303 and 16-20-304). The clerk has 20 days before commencement of each of the dockets in all cases. In addition, the circuit clerk acts as a secretary to the jury commission by keeping a list of all prospective jurors (ACA 16-32-101 et seq.) The circuit clerk is also the ex-officio county recorder; and is responsible for recording deeds, mortgages, liens, and surety bonds, and many other orders and instruments which involve property within the county (ACA 14-15-401 et seq). The circuit clerk maintains a record of many miscellaneous items, and files certain licenses. The circuit clerk also swears in all notaries public and files regulations of state agencies which license trade or professional workers.

The county collector is the collector of taxes for the county and collects municipal, county, school and improvement district taxes and turns them over to the county treasurer. The collector is responsible for collecting all property taxes from the first day of March to the fifteenth day of October during the calendar year after they are assessed. By statute, the collector is required to turn over all tax revenue to the treasurer at least once a month (ACA 26-39-201). The County Depository Board may require the collector and other county officials to settle with the county treasurer more frequently than once a month (ACA 19-8-106). Taxpayers may pay their taxes in installments, with one-fourth of the total being due between March and April, one-fourth being due between April and July, and the remaining one-half between July and October 15 (ACA 26-35-501). Also, a county collector may authorize the county's taxpayers other than a utility or carrier to pay current real

and personal property taxes in installments in any amount between the first business day in March and October 15 [ACA 26-35-501(a)(2)(B) enacted in 2011].

Any real or personal property taxes not paid by the fifteenth day of October, or falling within one of the exceptions to the requirement that taxes be paid by October 15 of each year (i.e., postmarked prior to October 15 or paid after October 15 if the fifteenth falls on a weekend or holiday), are considered delinquent and the collector extends a 10% penalty against the taxpayer (ACA 26-36-201). Before December 1st of each year, the collector of taxes shall prepare a list of delinquent personal property taxes and deliver a copy of the list to a legal newspaper in the county. Within seven (7) days thereafter, the newspaper shall publish the list. If there is no newspaper in the county or district, the publication shall be in the nearest newspaper having a general circulation in the county or districts for which the list is being published. ACA 26-36-203

The duty of the county assessor is to appraise and assess all real property between the first Monday of January and the first of July, and all personal property between the first Monday in January and the thirty-first of May. (ACA 26-26-1408 and 26-26-1101). All property in the state shall be assessed according to its value on the first of January except merchants and manufacturers inventory that is assessed at its average value during the year immediately preceding the first of January. ACA 26-26-1201

The assessor must make an abstract of assessment showing the total assessed value of the county. On August 1st, the assessor turns over to the County Equalization Board his/her Real Property Assessment Book and his/her Personal Property Assessment Book.

The assessor is required to maintain current appraisal and assessment records by securing necessary filed data and making changes in valuations as they occur in land use and improvements. He/she is also charged with staying abreast of all property transactions within the county and keeping a file on all properties updated throughout the year. ACA 26-26-715

The county treasurer is the disbursement officer of the county, and is the unofficial or quasi comptroller. A few counties do have a county comptroller. The treasurer is responsible for the custody and disbursement of all county funds and school district funds. The treasurer, therefore, receives county property tax collections, county sales tax collections, county turnback funds, grant funds, fees and fines from other county officials and departments, and revenues from various other sources. The treasurer, after receiving this revenue, distributes the money to the various taxing entities and the other units of the county. The county treasurer signs checks, based on a warrant prepared and signed by the county clerk indicating that the expenditure has been authorized by the county court, to pay employees and creditors of the county. A copy of each check serves as a warrant and is filed in the county financial records. ACA 14-24-204 provides for an alternate method whereby the county treasurer prepares and issues the check.

The treasurer must keep an accurate and detailed account of all receipts and disbursements of the county (ACA 14-15-807). The treasurer is required to make a monthly financial report to the quorum court on the fiscal condition of the county (ACA 14-20-105). The treasurer is also the investment officer for the county. The law requires the county treasurer to make timely investment of public funds in order to earn optimum interest. ACA 19-8-107

The county treasurer is required to charge a two percent commission on funds coming to his/her office (21-6-302). There are a few exceptions to this rule which are covered in detail in the Treasurer Commission chapter of this manual. Also, the county treasurer is allowed only 1/4 of 1% commission on funds from school districts that employ their own treasurer (ACA 6-13-701) and 1/8 of 1% on funds from municipal improvement districts (ACA 14-90-913). The commission is not kept by the treasurer but is intended to create a source of revenue accruing to the office from which the salary and operation of the office is paid. Any excess treasurer's commission shall be redistributed on a pro rata basis to the various entities that were charged. [AG Opinion #78-112 and 21-6-302(h)].

The county coroner is charged with the responsibility of determining the cause of death for those deaths properly the responsibility of the coroner. Although the duties of the county coroner are, necessarily, intermittent, the office is a full-time position. The coroner is tasked with the investigation of deaths occurring within the county 24 hours a day, 7 days a week and 365 days per year. At any time the coroner is required to investigate deaths. When a death is reported to the coroner, he shall conduct an investigation concerning the circumstances surrounding the death of an individual and gather and review background information, including but not limited to, medical information and any other information which may be helpful in determining the cause and manner of death. (ACA 14-15-301). These duties are mandated to be completed in very short timeframes.

The county surveyor locates boundaries of specific properties at the request of the assessor, and establishes disputed property lines upon request of the county, circuit or chancery court (ACA 14-15-702). The surveyor is also county timber inspector and determines the amount of timber cut, records the log markings, and prosecutes persons who remove timber from state owned lands (ACA 15-32-201).

A constable is a constitutional township official not a county official as some might think. A constable is charged, by law, to conserve the peace in his township (ACA 16-19-301). In order for a constable to have access to information from the Arkansas Crime Information Center and to carry a firearm, the officer must receive required training. Uniform and vehicle requirements are also mandated for constables in the performance of official duties (ACA 14-14-1314).

The legislative body of county government is called the quorum court and is composed of 9, 11, 13 or 15 members depending on the population of the county. The quorum court members are called justices of the peace and are elected for two-year terms from districts within the county. These district officials meet each month, more often if necessary, to conduct county business and review ordinances and resolutions for passage. The county judge is the presiding officer over the quorum court without a vote, but with the power of veto. This veto can be overridden with a 3/5ths vote of the total membership of the quorum court. (See generally ACA 14-14-801 et seq and 14-14-901 et seq.)

As provided by Amendment No. 55 of the Arkansas Constitution, a county government acting through its quorum court may exercise local legislative authority not expressly prohibited by the Constitution or by law for the affairs of the county (ACA 14-14-801). Some limitations are: The quorum court cannot declare any act a felony (felonies are covered by the State Criminal Code); quorum courts may not participate in the day-to-day administration of county executive branch offices and exercise no authority unrelated to county affairs. ACA 14-14-806

The quorum court may exercise the following powers, but not limited to: A) the levy of taxes in manner prescribed by law; B) appropriate public funds for the expenses of the county in a manner prescribed by ordinance; C) preserve the peace and order and secure freedom from dangerous or noxious activities; provided, however, that no act may be declared a felony; D) for any public purpose, contract, or join with another county, or with any political subdivision or with the United States; E) create, consolidate, separate, revise, or abandon any elected office or offices except during the term thereof; provided, however, that a majority of those voting on the question at a general election have approved said action; F) fix the number and compensation of deputies and county employees; G) fix the compensation of each county officer with a minimum and maximum to be determined by law; H) fill vacancies in elected county offices; I) provide for any service or performance of any function relating to county affairs; J) to exercise other powers, not inconsistent with law, necessary for effective administration of authorized services and functions ACA 14-14-801



## **Chapter Two - DUTIES OF THE OFFICE**

The County Treasurer is an elected official in county government. Amendment 95 of the Arkansas Constitution provides for the election of the Treasurer to a four-year term of office with the requirement that he/she be a qualified elector and resident. In the event of a vacancy in office, the Quorum Court fills the vacancy by appointment, the appointee serving until the next general election when a successor is elected. Before beginning his/her duties, the Treasurer must enter into an official bond for the protection of the county. This may be accomplished through the State Fidelity Bond Program, which covers all employees on the payroll, or a Surety Bond purchased for the officer. He/she must also take the constitutional oath of office.

The County Treasurer is entitled to that salary fixed for his/her office by applicable law and Quorum Court appropriation, but he/she cannot keep the various commissions and fees collected in the performance of his/her duties as the Treasurer, as in that respect, the Treasurer is only an agent or trustee for the County Treasury. (Ark. Const., Amend. 55)

To assist the Treasurer in the performance of his/her duties, the Treasurer may appoint such number of deputies as the Quorum Court may approve. The Treasurer generally supervises the deputies and may discharge them and regulate their employment within the guidelines established by the Quorum Court.

The office of the County Treasurer is to be operated according to the office budget which is established annually by the Quorum Court of the County.

In general, the Treasurer is the disbursement officer of the County, and is the unofficial or quasi-comptroller. The Treasurer is responsible for the custody and disbursement of all county funds and appropriate school district funds.

The Treasurer receives tax collections (property, sales and property tax relief), county turnback funds, federal matching funds, and revenues from various other sources. After receiving this revenue, the Treasurer distributes the money to the various school districts and county accounts. The Treasurer signs checks based on a warrant prepared and signed by the County Clerk indicating that the expenditure has been authorized by the County Court, to pay employees and creditors of the County. A copy of each check serves as a warrant and is filed in the County financial records.

Many Arkansas counties have opted for an optional and more modern method of check paying which allows for the county treasurer to prepare and issue the check. Under this method once the normal claims procedure has been completed the treasurer causes checks to be prepared in payment of claims filed with the county court. The clerk certifies to the treasurer that a valid claim exists and the treasurer issues prenumbered checks that denote the fund from which the claim is being paid. This method, allowed by § 14-24-204(b), provides for better accounting for and safeguarding of checks for bank accounts under the control of the treasurer – and for ascertaining prior to check issuance that there is a sufficient unencumbered cash balance on hand in the appropriate county fund for the payment.

The Treasurer is charged with keeping an accurate and detailed account of all receipts and disbursements of the County. He/she is required to make a monthly financial report to the Quorum Court on the fiscal condition of the county. This report is provided upon request to the Prosecuting and Deputy Prosecuting Attorneys.

The records of the County Treasurer's office are the evidence of his/her official acts and, therefore, it is necessary that they be accurately recorded and well maintained.

## DUTIES OF COUNTY TREASURER

**Office of Treasurer** – County treasurers shall keep their offices at their respective county sites. ACA 14-15-802

**Appointment of a Deputy** - (a) Appointment of a deputy treasurer shall be:

- (1) In writing;
- (2) Signed by the county treasurer; and
- (3) Recorded in the county recorder's office.

(b) A deputy treasurer shall possess powers as authorized by the county treasurer. ACA 14-15-804

**Duties generally** - It shall be the duty of each county treasurer to:

(1)(A) Receive and give receipt for all moneys payable into the county treasury and to pay and disburse the moneys on warrants or checks drawn by order of the county court.

(B) Any nonrevenue receipts as defined in § 21-6-302(f)(2) shall be deposited into the same county fund from which the original expenditure was made;

(2)(A) Refuse payment of any warrant or check that would cause a deficit balance in any special revenue account without an appropriated transfer of general funds to cover the deficit, except as provided in this section.

(B)(i) A grant account that operates as a reimbursable grant fund may operate with a deficit balance if there is a county general fund cash balance or an appropriate special revenue fund cash balance sufficient to support the deficit.

(ii) When the grant moneys are received by the county, the moneys shall be receipted to the proper grant fund by the county treasurer.

(iii) Any remaining deficit balance at the conclusion of the grant cycle shall be brought to a zero balance with an appropriated transfer of general funds or an appropriated transfer from the applicable special revenue fund; and

(3)(A) Maintain a positive "general fund" balance.

(B) The general fund shall include county general and any other ledger account on the treasurer's books accruable to county general.

(C) The treasurer shall refuse payment of any warrant or check that would cause a deficit balance of the general fund in aggregate.

ACA 14-15-805 (as recently amended by Act 310 of 2019)

**Criminal Offense.** (a) If any county treasurer shall neglect or refuse to pay any warrant or check drawn on him or her by order of the county court of his or her county, having cash available in the fund on which the warrant or check is drawn, he or she shall forfeit and pay to the holder of the warrant four (4) times the amount thereof. (b) The forfeiture may be recovered by a civil action in the name of the party aggrieved against the treasurer and his or her securities, and the treasurer shall be deemed guilty of a misdemeanor in office and upon conviction shall be removed from office. ACA 14-15-806

**Accounting** – A county treasurer shall keep a true and just account of all moneys received and disbursed and a regular abstract of all warrants paid by him or her. ACA 14-15-807

**Duplicate receipts for moneys paid-Books kept ready for inspection** – A treasurer shall make duplicate receipts in favor of the proper person for all moneys paid into the treasury and keep the books, papers and money pertaining to his or her office at all times ready for the inspection of the county court or the presiding judge thereof. ACA 14-15-807

**Account of receipts and expenditures furnished county court** – A treasurer shall furnish the county court with an account of the receipts and expenditures of the county not previously accounted for at each term of the county court, if required. ACA 14-15-807

**Disposition of fees and fines collected** – (a)(1) All fees, fines, penalties, and other moneys collected by any county officer, deputy, or county employee shall be deposited with the County Treasurer on the first day of each month or within ten (10) days thereafter, and, unless otherwise provided by law, shall be placed in the county general fund.

(2) Inmate commissary trust account balances belonging to the inmate and held by the county sheriff are not deemed county funds and are not subject to this section.

(b) The County Treasurer shall keep a complete and accurate record of the receipt of such moneys and shall provide a written receipt to the person or office making such a deposit. ACA 21-6-310

**Fees charged for a phone call by an inmate in a correctional facility** – (a)(1) Commissions derived from inmate telephone services, if the inmate telephone services is provided by the county or regional detention facility, and profits earned from inmate commissary services provided in the various county and regional detention facilities in the state shall be deposited with the county treasurer of the county in which the county or regional detention facility is located.

(B) The county treasurer shall credit the funds collected under subdivision (a)(1)(A) of this section to the county sheriff's office fund.....

(c) This section does not apply to funds derived inmate telephone services or inmate commissary services provided in Division of Correction facilities or Division of Community Correction facilities or in municipally owned detention facilities or in county detention facilities in counties with a population of one hundred seventy-five thousand (175,000) or more according to the latest federal decennial census.

A.C.A. 12-41-105

**County administration of justice fund.** - (a) There is hereby created in each county a fund in the office of the county

treasurer to be known as the "county administration of justice fund".

(b) The county administration of justice fund shall be used to defray a part of the expenses of the administration of justice in the county. From the fund, the county shall continue to finance the following county agencies and programs which are currently funded, in whole or in part, by filing fees and court costs, at a funding level equal to not less than the greater of the amount which was collected by the county from filing fees and court costs for the agency or program in the calendar year ending December 31, 1994, or the amount appropriated by ordinance enacted prior to December 31, 1994, or on February 13, 1995, or on February 14, 1995, or by resolution dated February 9, 1995, to the agency or program for the calendar year ending December 31, 1995:

(1) The prosecuting attorney fund, including all grant funds awarded and appropriated for the calendar year ending December 31, 1995;

(2) The prosecuting attorney's victim-witness program fund;

(3) The public defender/indigent defense fund and public defender investigator fund, including all grant funds awarded and appropriated for the calendar year ending December 31, 1995;

(4) The county law library fund;

(5) The county jail fund; and

(6) The intoxication detection equipment fund.

(c)(1)(A) The county administration of justice fund of each county may retain an amount equal to the amount which was collected by the county from court costs and filing fees for county administration of justice expense in the calendar year ending December 31, 1994, or the amount appropriated from court costs and filing fees by ordinance enacted prior to December 31, 1994, or on February 13, 1995, or on February 14, 1995, or by resolution dated February 9, 1995, for county administration of justice expense from court costs and filing fees for the calendar year ending December 31, 1995, plus, for calendar years 1995 – 2001, an additional amount based upon the average percentage increase in the Consumer Price Index for All Urban Consumers or its successor, as published by the United States Department of Labor for the two (2) years immediately preceding.

(B)(i) The amount retained during calendar years 2002, 2003, 2004, and 2005 shall be the amount retained during calendar year 2001.

(ii) Except as provided in subdivision (c)(1)(B)(iii) of this section, for calendar years beginning 2014 and each calendar year thereafter, an additional amount shall be added to the amount to be retained based upon the lesser of the average percentage increase in the Consumer Price Index for All Urban Consumers or its successor, as published by the United States Department of Labor, for the two (2) years immediately preceding or the percentage rate of increase in collections of the State Administration of Justice Fund for the two (2) years immediately preceding.

(iii) The provisions of subdivision (c)(1)(B)(ii) of this section shall not be effective if the Chief Fiscal Officer of the State determines that the additional amount retained under subdivision (c)(1)(B)(ii) of this section has exceeded one million dollars (\$1,000,000) in a calendar

year and any additional amount to be retained must be authorized by the General Assembly.

(C) All local ordinances of the counties and cities authorized and adopted under § 24-8-318 shall remain in full force and effect.

(2) For the calendar year beginning January 1, 1998, the base amount to be retained shall be:

(A) Increased by any increase in the Consumer Price Index for All Urban Consumers as provided for in subdivision (c)(1) of this section; and

(B) Decreased by eighty-five percent (85%) of the total dollar amount which was certified by the county as having been collected during calendar year 1994 and for the purpose of funding the office and operation of the public defender and public defender investigator.

(d) Nothing in this section shall prevent the county from funding any additional costs for the administration of justice from these or other county funds.

(e) The county shall remit on or before the fifteenth day of each month all sums received in excess of the amounts necessary to fund the expenses enumerated in subsections (b) and (c) of this section during the previous month from the uniform filing fees provided for in § 21-6-403 and 9-15-202, and the uniform court costs provided for in § 16-10-305 to the Administration of Justice Funds Section for deposit into the State Administration of Justice Fund.

ACA 16-10-307 [Also see 16-10-603 & 16-10-604]

**Monthly treasurer's report.** - The county treasurer or the county comptroller shall submit each month to the county quorum court a full report and a detailed statement of the financial condition of the county, showing receipts, disbursements, and balance on hand.

ACA 14-20-105 (As recently amended by Act 310 of 2019)

**Time checks to be redeemed** - (a)(1) Checks issued by a county of this state drawn upon the county treasurer are valid and redeemable only for a period of six (6) months from the date of issuance.

(2) Checks issued by a county shall contain on the face of the check the following words: "This check void after six (6) months from date of issuance."

(b)(1) If a county check is not redeemed or reissued within the time prescribed in subdivision (a)(1) of this section, there is established a presumption that the payee declined its presentment, and it shall be the duty of the county treasurer to cancel the check and to credit the fund from which the check is drawn. (2) If a county check is returned and is not deliverable to the payee, the check shall be considered unclaimed and shall be submitted as unclaimed property to the Auditor of State in accordance with the Uniform Disposition of Unclaimed Property Act, § ACA 18-28-201 et seq.

ACA 14-24-120 (As recently amended by Act 66 of 2021)

**General Accounting Requirements** -

(a)(1) The county treasurer shall receive and receipt for all moneys payable to the county treasury and pay and

disburse them on warrants or checks drawn by order of the county court.

(2) The treasurer shall keep a true and accurate account of all moneys received and disbursed and a true and accurate record of all warrants or checks paid by him or her.

(3) The treasurer shall maintain and issue prenumbered receipts for all moneys paid into the treasury in accordance with § 14-25-108.

(b) The treasurer shall establish and maintain the following accounting practices, in relation to the operations of the office:

(1) The number and date of checks paying warrants where the county is using a system of paying several warrants presented by the bank shall be identified with the warrants in posting to the treasurer's book or record of accounts;

(2) The check number and its date shall be entered on the warrant, and the warrant number and its date shall be entered on the face of the check and on the check stub, as well as the account represented;

(3) Postings to the treasurer's book or record of accounts of warrants and checks shall be under the transaction date on the instruments, not the date the items are entered in the books or records of accounts;

(4) Banks shall be requested to present all warrants held at the end of the month promptly so that they may be included in the treasurer's book or record of accounts in the month to which they pertain;

(5) All funds in the treasurer's book or record of accounts shall be reconciled with the bank monthly. Reconciliations shall be retained and filed with the bank statements;

(6) Clear reference shall be made in the treasurer's book or record of accounts as to the origins of all moneys. This may be by notation citing the origin, date, receipt number, and other pertinent information;

(7) Transfers shall clearly state the fund to which the moneys are being transferred, and the recipient fund shall state the origin of its receipt;

(8) A brief explanation of the computation of the treasurer's commission to provide a clear and permanent record of how the commission was determined shall be maintained;

(9) Corrections to the treasurer's book or records of accounts shall be entered at the time of discovery and under the date of the entry into the treasurer's records. A notation shall be made at the erroneous balance if it is at a previous date, but under no circumstances shall a previous month's balance be changed when it has been brought forward into the succeeding period;

(10) Receipts shall be prepared for all moneys received, but shall never be used to effect any other type of accounting transaction. Bank deposits shall be intact, prompt, and identified as to type of receipts;

(11) Copies of all receipts shall be retained, including copies of voided receipts;

(12) Printers' certificates shall be obtained and kept for each printing order of formally prenumbered receipts;

(13) All balances on the treasurer's book not belonging to the county and awaiting clearance shall be

remitted on or before December 31, or promptly thereafter, as of December 31; and

(14) Municipal fund revenue shall be remitted to the municipality by separate check for each appropriate dedicated municipal fund.

ACA 14-25-114 (As recently amended by Act 132 of 2019)

**Time for payment.** -

(a)(1) A county clerk, probate clerk, circuit clerk, county sheriff, county collector, or any other county official shall pay over to the county treasurer on the first of each month, or within ten (10) days thereafter, all funds in his or her possession belonging to the county or its subdivisions that are by law required to be paid into the county treasury, whether taxes, fines, or any moneys that are collected for any purpose by law and belonging to the county.

(2) Inmate commissary trust account balances belonging to the inmate and held by the county sheriff are not deemed county funds and are not subject to this section.

(b)(1) This section does not mean that the county collector shall make a distribution of taxes to all funds but that he or she shall settle with the county treasurer in a lump sum, and the county treasurer shall credit it to the county collector's unapportioned account.

(2) Upon the issuance of a certificate of the county clerk or other county officer designated pursuant to § 26-28-102(a) that is issued on or before the thirtieth day of each month, the county treasurer shall transfer to the various funds ninety percent (90%) of the advance payments made by the county collector during the collecting period and, upon final settlement, the proper adjustments shall be made with the various accounts, and the balance remaining in the unapportioned account shall be distributed upon order of the county court approving the final settlement of the county collector.

ACA 26-39-201 (As recently amended by Act 310 of 2019)

**Property Tax Reduction** - The county also receives reimbursements each month from the Chief Fiscal Officer of the State for the County Property Tax Relief Funds. The Treasurer receives these reimbursements and credits them to the county property tax relief fund. Ninety-six percent (96%) of the funds shall be allocated and distributed to the various taxing entities within the county that levy ad valorem taxes. The allocation shall be based on a certification from the collector of the amount of the real property tax reduction per taxing entity provided in § 26-26-1118. The 4% retained in the fund is the commission of the county collector as authorized under § 21-6-305(a)(4). This commission shall be transferred to the general fund of the county in December of each year to become a part of the total commission of the county collector. These funds are subject to § 21-6-305(d) [meaning they are subject to excess commission]. ACA 26-26-310

(a)(1) On or before March 31 of each year, the county collector of each county shall certify to the Chief Fiscal

Officer of the State the amount of the real property tax reduction provided in § 26-26-1118.

(2)(A) After receipt of the certification from the county collectors, the Chief Fiscal Officer of the State shall determine the proportionate share of the total statewide reduction attributable to each county.

(B)(i) At the end of each month, the Chief Fiscal Officer of the State shall determine the balance in the Property Tax Relief Trust Fund and certify it to the Treasurer of State.

(ii) The Treasurer of State shall make distributions from the Property Tax Relief Trust Fund to each county treasurer in accordance with the county's proportionate share of the total statewide property tax reduction for that calendar year resulting from the provisions of § 26-26-1118.

(iii)(a) Effective January 1, 2006, the Treasurer of State shall make a monthly distribution from the Property Tax Relief Trust Fund to each county treasurer.

(b) The distributions for January, February, and March shall be in accordance with the county's proportionate share of the total statewide property tax reduction as of the final county certification of the previous year.

(c) Beginning in April of each year, the distribution from the Property Tax Relief Trust Fund to each county treasurer shall be in accordance with the county's proportionate share of the total statewide property tax reduction for that calendar year under § 26-26-1118.

*NOTE: (Middle of statue excluded because not applicable to County Treasurer) .... Statute continues as follows:*

(3)(A)(i) Funds so received by the county treasurers shall be credited to the county property tax relief fund.

(ii) Ninety-six percent (96%) of the funds shall be allocated and distributed to the various taxing entities within the county that levy ad valorem taxes.

(iii) The allocation shall be based on a certification from the county collector of the amount of the real property tax reduction per taxing entity provided in § 26-26-1118.

(iv)(a) The four percent (4%) retained in the county property tax relief fund is the commission of the county collector as authorized under § 21-6-305(a)(4).

(b) This commission shall become a part of the total commission of the county collector.

(v) These funds are subject to § 21-6-305(d).

(B) Funds so received by the various taxing units shall be used for the same purposes and in the same proportions as otherwise provided by law.

(b)(1) Distributions to each county shall continue on a monthly basis from the Property Tax Relief Trust Fund until the full amount certified by the county collectors, as of November 15 of each year, has been paid.

(2)(A) In no event shall the amount distributed to a county during a calendar year from the Property Tax Relief Trust Fund exceed the final amount certified by the county collector as of November 15 as the property tax reduction for that calendar year resulting from § 26-26-1118.

(B) If a county is paid in excess of its proportionate share, the Chief Fiscal Officer of the State may reduce payments made to the county for the subsequent calendar year until the overpayment is recovered.

(C)(i) On or before December 31 of each year, the Chief Fiscal Officer of the State, in cooperation with the Legislative Council and the Legislative Auditor, shall determine that portion of the balance remaining in the Property Tax Relief Trust Fund that is in excess of the required reimbursement to the counties and shall certify the excess to the Treasurer of State.

(ii) Beginning December 31, 2005, and on December 31 of each subsequent year, the Treasurer of State shall:

(a) Calculate each county's proportionate share of one million dollars (\$1,000,000) based on the proportions used to reimburse the county for property tax reductions under subsection (a) of this section;

(b) Transfer the amount calculated under subdivision (b)(2)(C)(ii)(a) of this section to the county treasurer for allocation to the county assessor for use by the county assessor for the costs of administering Arkansas Constitution, Amendment 79, including without limitation costs for personnel, equipment, services, and postage used in the administration of Arkansas Constitution, Amendment 79;

(c) Distribute two million dollars (\$2,000,000) from the Property Tax Relief Trust Fund to the counties in the state using the formula stated in § 19-5-602(c)(1); and

(d) Distribute two million dollars (\$2,000,000) from the Property Tax Relief Trust Fund to the municipalities in the state using the formula stated in § 19-5-601(c)

*NOTE: (Middle of statue excluded because not applicable to County Treasurer) .... Statute continues as follows:*

(3)(A) The Legislative Auditor or his or her designee shall audit the books and records of the county assessor, county collector, or any other party as needed to ensure that the amount of the property tax reduction certified by the county collector is accurate.

(B) The Chief Fiscal Officer of the State may adjust the amount certified by the county collector if it is discovered that the certified amount is incorrect.

(c)(1) On or before June 30 and November 15 of each year, the county collector of each county shall recertify to the Chief Fiscal Officer of the State the amount of the real property tax reduction provided in § 26-26-1118.

(2) The recertification shall reflect the most current total of tax reductions based on corrections and amendments to the records of the county assessor.

(3) After receipt of the recertification from the county collectors, the Chief Fiscal Officer of the State shall redetermine the proportionate share of the total statewide reduction attributable to each county.

ACA. 26-26-310 (As recently amended by Act 808 of 2019)

**Generalities of County Accounting Law** – County officials must maintain all public funds in approved depositories. The funds must be maintained in these depositories in the name of the county office, with the official's name appearing secondarily to the name of the county office. ACA 14-25-102:

“All county officials of this state who receive public funds by virtue of their office shall maintain all public funds in

depositories approved for such purposes by law. The funds shall be maintained in these depositories in the name of the county office, with the official's name appearing secondarily to the name of the county office.”

#### ACA 14-25-102

All funds received by a county official by virtue of their office must be deposited intact to the proper office bank account. Public funds received by one county official and required by law to be transferred to another county official must first be deposited into the account of the first official receiving the funds, and then a check is written upon that account to properly transfer the funds to the other official. This will normally be done in monthly settlements. ACA 14-25-103:

“(a) All funds received by a county official by virtue of his or her official position shall be deposited intact to the accounts authorized in § 14-25-102. This section shall apply to all public funds coming into the hands of the official, including, but not limited to, the following: fines, fees, taxes, trust funds, federal funds, etc.

(b) Public funds received by one (1) county official and required by law to be transferred to another county official shall be deposited into the account of the first official receiving the funds, and then a check shall be written upon that account to properly transfer the funds.”

#### ACA 14-25-103

(a) All disbursements of county funds, except as noted in § 14-24-121, § 14-25-105, and § 14-25-112(b)(2), shall be made by prenumbered checks drawn upon the bank account of that county official.

(b) The checks shall be of the form normally provided by commercial banking institutions and shall contain as a minimum the following information: (1) Date of issue; (2) Check number; (3) Payee; (4) Amount both in numerical and written form; and (5) Signature of authorized disbursing officer of the county office.

(c) The county official shall maintain printers' certificates as to the numerical sequence of checks printed.

(d) The county official shall retain all voided checks for audit purposes.

(e) A county may use computer equipment for check preparation if the use of an automated software program that accomplishes the same purpose as prenumbered checks and other required denotations is in compliance with the Information Systems Best Practices Checklist provided by the Legislative Joint Auditing Committee.

#### ACA 14-25-104 (As amended by Act 66 of 2021)

**Important Note to ACA 14-25-104:** The now amended code includes three exceptions to prenumbered checks for county disbursements, which are as follows: (1) § 14-24-121 -electronic transfers; (2) § 14-25-105 - petty cash; and (3) § 14-25-112(b)(2) debit cards issued for the balance of an inmate commissary trust account.

As a general rule, all items of county income are to be formally receipted by the use of prenumbered receipts or

mechanical receipting devices such as cash registers or validating equipment. Receipts are to be prenumbered by the printer, and a printer's certificate obtained and retained for audit purposes. All copies of voided receipts are to be retained for audit purposes. ACA 14-25-108

County Accounting law was amended in 2013 to accommodate the use of computer software issued checks and receipts that are not prenumbered.

Arkansas Code § 14-24-204 and 14-25-104 were both amended by Act 451 of 2013 to add subsections saying, “A county may use computer equipment for check preparation if the use of an automated software program that accomplishes the same purpose as prenumbered checks and other required denotations is in compliance with the Information Systems Best Practices Checklist provided by the Legislative Joint Auditing Committee.”

Arkansas Code § 14-25-108 was amended by Act 451 of 2013 to amend subsection (a)(3) to say, “A county may use an electronic receipting system that accomplishes the same purpose as prenumbered receipts if the system is in compliance with the Information Systems Best Practices Checklist provided by the Legislative Joint Auditing Committee.

#### **County Fiscal Year Accounting Method** – (a)The fiscal year

of the counties of the state, covering each period of twelve (12) months, begins on January 1 of each year and ends at the close of business on December 31 of the same year.

(b)(1) Counties shall use the modified accrual accounting basis for audit purposes.

(2)(A) For county government and the regulatory basis of accounting under §10-4-412(b)(2), “modified accrual accounting basis” is defined as an accounting system that recognizes revenues at the time revenues become available and measurable and expenditures at the time liabilities are incurred.

(B) Revenues and expenditures are accruable to the fiscal year as provided in subsection (c) of this section.

(c)(1) Obligations incurred by a county on or before the end of the fiscal year that are not issued an accounts payable claim until the following fiscal year shall be posted to the prior fiscal year appropriations journal when paid within the first two (2) months of the following fiscal year.

(2)(A) Revenues collected and owed to a county treasury before the end of the fiscal year and not remitted to the county treasury until the following fiscal year are accruable to the prior fiscal year when receipted by the county treasurer within the first two (2) months of the following fiscal year, except as provided in subdivision (c)(2)(C) of this section.

(B) Moneys received by the respective counties from the County Aid Fund are revenues of the year in which the moneys are received and are not revenues of the year in which the moneys were collected and paid into the State Treasury.

(C) Moneys received by the respective counties from the Treasurer of State representing county sales and use taxes are revenues of the year in which the moneys are received

and are not revenues of the year in which the moneys were collected and paid into the State Treasury.

(d) The finance officers of the county shall keep and maintain records as required by law to account for accruable receivables or payables for audit purposes.

ACA 14-71-101 (As recently amended by Act 310 of 2019)

**Comprehensive Financial Management System** - (a) (1) In order to provide necessary financial information for the county judge, the members and committees of the county quorum court, and other interested officers and departments of the county, the Legislative Auditor is authorized and directed to develop a comprehensive financial management system for appropriate funds of the various counties in the State of Arkansas. (2) This financial management system shall provide for adequate controls over revenues, expenditures, and balances to assure that current information will always be available concerning the financial condition of the county and its various offices and departments. (3) The system shall include a budgeting and accounting system designed to classify the receipt of and the appropriations and disbursements of county funds in accordance with the object and purpose of the expenditures in such detail as will be suitable for an analysis of the operations of all county offices and departments and which will provide a breakdown and itemization of all expenditures compatible with and comparable to the appropriations of the quorum court.

(b) In the event any county is of the opinion that its system of budgeting and accounting for appropriated county funds is such that it equals or exceeds the basic system prescribed by this section, the county, acting through the quorum court, may request a review of its system by the Legislative Joint Auditing Committee. If the committee concurs with the county, the committee may issue a certificate to the county stating that the county's budgeting and accounting system is of such degree of sophistication that the basic requirements of this section are being met and exempting the county from the requirements of the particulars of the system prescribed by this section.

ACA 14-21-101

**Note:** *This law was enacted in 1981, with the financial management system to be implemented by the counties on or before January 1, 1983. The original system and manual was revised for implementation on or before January 1, 2014. The manual is periodically updated by Arkansas Legislative Audit and is available under the resources tab on the website of Arkansas Legislative Audit. The manual is also available on the Association of Arkansas Counties website under publications.*

**Annual Financial Report** - (a) (1) The clerk of the county court and the county treasurer shall make out or cause to be made out a full and complete annual financial report of the county, using the financial records of the county clerk and county treasurer, giving: (A) The treasurer's report of the beginning cash balance; (B) The treasurer's report as to the amount of revenue from each source classification;

(C) The treasurer's report as to the ending cash balance; (D) The county clerk's report as to the amount expended during the fiscal year for all purposes; and (E) A statement of the bonded indebtedness and short-term indebtedness of the county.

(2) The annual county financial report shall include all operating accounts of the county for which the quorum court has appropriating control.

(3) The treasurer shall submit all reports required under this section to the clerk of the county court by March 1. (b)(1)(A) The clerk of the county court shall publish the annual financial report of the county: (i) One (1) time in one (1) newspaper published in the county; and (ii) On a website owned or maintained by the county, the state, or the Association of Arkansas Counties.

(B) If a newspaper is not published in the county, the clerk of the county court shall publish the annual financial report of the county one (1) time in the newspaper having the largest circulation in the county.

(2) The annual financial report shall be published by March 15 of each year for the previous fiscal year of the county.

(c) All costs associated with the publication of the annual financial report of the county may be prorated equally between the clerk of the county court and the county treasurer.

ACA 14-21-102 (As recently amended by Act 564 of 2019)

### **Deposit and Investment of Public Funds**

**Eligible Investment Securities** - As used in this subchapter, "eligible investment securities" means:

(1) A direct or guaranteed obligation of the United States that is backed by the full faith and credit of the United States Government;

(2) A direct obligation of an agency, instrumentality, or government-sponsored enterprise created by act of the United States Congress and authorized to issue securities or evidences of indebtedness, regardless of whether the securities or evidences of indebtedness are guaranteed for repayment by the United States Government;

(3) A bond or other debt of the state, a school district, a county government, a municipal government, or an authority of a governmental entity that:

(A) Is issued for an essential governmental purpose or is guaranteed by a state agency; and

(B) Has a debt rating from a nationally recognized credit rating agency of "A" or better at the time of purchase; and

(4) A bond from the State of Israel that is guaranteed and backed by the full faith and credit of the government of Israel as the sovereign debt of the State of Israel.

ACA 19-1-501 (as recently amended by Act 644 of 2017)

**Investments Permitted** - (a) (1) With the approval of the county or municipal depository board, a treasurer may convert any funds in the treasurer's possession or under the treasurer's control and not presently needed for other purposes into one (1) or more of the following investments:

(A) Eligible investment securities having a maturity of not longer than five (5) years from the date of acquisition

unless, as documented at the time of acquisition, the investment is to fund or support a specific purpose and there are no expectations that the investment will be sold before maturity;

(B) An Arkansas bank certificate of deposit or a certificate of deposit authorized under § 19-8-111;

(C) An account established by a local government joint investment trust authorized under the Local Government Joint Investment Trust Act, § 19-8-301 et seq.; or

(D) An Arkansas financial institution repurchase agreement for eligible investment securities in which the seller agrees to repurchase the investment at a price including interest earned during the holding period as determined by the repurchase agreement.

(2) The following entities may convert funds that are in the possession of the entity or under the control of the entity and that are not presently needed for other purposes into an investment listed in subdivision (a)(1) of this section:

(A) A county board or commission;

(B) A municipal board or commission, including without limitation a board of trustees of a policemen's pension and relief fund, a board of trustees of a firemen's relief and pension fund, a waterworks commission, and a sewer committee; and

(C) A drainage district, levee district, and improvement district, including without limitation a waterworks district, electric light district, municipal improvement district, and suburban improvement district.

(3) This subsection does not apply to funds of a school district.

(b) (1) Unless otherwise provided by a signed written agreement between the school district or districts and the county treasurer, funds of a school district shall be invested by the:

(A) School district treasurer when the school district has a treasurer; or

(B) County treasurer when the school district does not have a treasurer.

(2) To the extent directed by the board of directors of the school district, investments shall be in:

(A) General obligation bonds of the United States;

(B) Bonds, notes, debentures, or other obligations issued by an agency of the United States Government;

(C) General obligation bonds of the state; or

(D) Bank certificates of deposit.

(c) A school district may invest moneys held for the repayment of a federally recognized qualified zone academy bond under 26 U.S.C. § 1397E, as it existed on January 1, 2005, in a guaranteed investment contract or forward delivery agreement in which the school district is guaranteed a certain rate of interest on its investment if the guaranteed investment contract or the forward delivery agreement is entered into between the school district and the purchaser of the qualified zone academy bond.

(d) A treasurer or other custodian of public funds who is authorized to purchase and hold eligible investment securities may use a brokerage account to acquire, sell, and hold the investment if the investment is established with a broker-dealer that:

(1) Has offices in the state;

(2) Is registered with the State Securities Department;

(3) Is a member of the Financial Industry Regulatory Authority, Inc.; and

(4) Is a member of the Securities Investor Protection Corporation.

(e) Unless restrictions are established by the donor, a private donation to a city of the first class, a city of the second class, or an incorporated town may be invested in accordance with the prudent investor rule established under § 28-71-105.

ACA 19-1-504

**Definitions - (a)** "Bank" or "banking institution" means any state bank, national bank, savings bank, savings association, thrift, or other financial institution authorized to do business and having a main office or branch office in this state, which is insured by the Federal Deposit Insurance Corporation.

(b) "Public funds" or "funds" means any and all kinds of funds handled by treasurers, collectors, commissioners, sheriffs, clerks, and receivers appointed under § 14-62-104.

ACA 19-8-101

**Investment of Public Funds - (a)** Except as provided in subsection (b) of this section, all public funds as defined in § 19-8-101 shall be deposited into banks located in the state.

(b) A school district may seek a hardship waiver from the Legislative Joint Auditing Committee from this section and deposit public funds into an out-of-state bank if:

(1) The school district is designated as an isolated school district under §§ 6-20-601 and 6-20-602;

(2) The school district lies on the borders of the state line;

(3) The nearest Arkansas bank is located at least eighteen (18) miles from the administrative offices of the district;

(4) The administrative offices of the district are located within six (6) miles from an out-of-state bank; and

(5) The out-of-state bank meets all other requirements concerning collateralization of state funds.

ACA 19-8-104

**Annual List of Eligible Banks - (a)** Annually, on December 1, the Bank Commissioner shall furnish to the governing board of each city, or town officer, and the county board of each county, and also any officer of any improvement district or any other political subdivision, having the supervision of public funds or funds belonging to the state or any political subdivision a list of all the banks or banking institutions doing business in this state which are members of the Federal Deposit Insurance Corporation. The commissioner shall recommend the maximum amount of deposit of public funds each bank shall be allowed to receive. None of these public funds shall be deposited into any bank other than those contained in the list.

(b) In no instance shall the commissioner recommend, or any bank accept, for deposit more public funds than twenty-five percent (25%) of the total of its general deposits, exclusive of the public funds. Public money in excess of the amount allowed in this section, if approved by



the governing board, may be deposited into an authorized bank if the excess deposit is carried in cash, United States Government bonds, Housing and Home Finance Agency bonds, or demand loans on cotton of the kind commonly known as "Commodity Credit Corporation loans", being only such loans as are guaranteed by the United States.

ACA 19-8-105

**Depository Boards - (a) (1)** The quorum court of each of the several counties shall by ordinance establish a county depository board. The county depository board is to be composed of the county judge, the county treasurer and county collector, or the sheriff when acting as ex officio tax collector, or those officials performing the duties of the above officials where an elective county office has been changed in accordance with Arkansas Constitution, Amendment 55.

**(2)** The board shall designate depositories and supervise the depositing of all county funds and all other public funds held by the county treasurer, except funds of a school district, and also shall designate depositories and supervise the depositing of all funds collected and held by the county collector.

**(3)** The board may also require county officials to settle with the county treasurer more frequently than required by Arkansas law.

**(b) (1)** Except as provided in subdivision (b)(2) of this section, the following persons shall constitute a three-member board to designate depositories and supervise the depositing of municipal funds:

**(A)** A mayor;

**(B)** A city clerk or recorder or clerk-treasurer or recorder-treasurer; and

**(C)** A city council member selected by the city council.

**(2)** Although the board shall not total more than three (3) members, the city council may replace one (1) of the three (3) board members listed in subdivision (b)(1) of this section with the city finance officer or other official.

**(3)** A majority of the board members shall be necessary to conduct business and to constitute a quorum.

**(c)** The commissioners of road, drainage, levee, and other improvement districts shall designate depositories and supervise the depositing of funds of their respective districts.

**(d)** The board of directors of any school district shall constitute a board to designate depositories and supervise the depositing of school district funds. All school district funds, whether held by the treasurer of the school district or by the county treasurer, shall be deposited as designated by the board of directors.

**(e)** A receiver appointed under § 14-62-104 shall be a designated depository and supervise the depositing of funds collected under § 14-62-101 et seq.

ACA 19-8-106 (As recently amended by Act 712 of 2017)

**Depository agreements - (a) (1)** After the receipt from the Bank Commissioner of the list of banks or banking institutions eligible to receive public deposits, the depository boards shall:

**(A)** Designate the banks or banking institutions into which the funds shall be deposited; and

**(B)** With each bank or banking institution designated under subdivision (a)(1)(A) of this section, enter into a depository agreement and any supplemental agreements under subsection (c) of this section needed to perfect security of public deposits not fully insured directly by the United States.

**(2)** The depository boards may at any time enter into depository agreements with any new bank chartered if the bank is certified by the commissioner as being eligible as a depository of public funds under the laws of this state.

**(3)(A)** All depository agreements and supplemental agreements required for creating an enforceable perfected security in collateral for deposits of public funds shall continue in full force until the bank or banking institution receives written notice of revocation by the depository board or until there is a change of membership on the depository board as prescribed in this subsection.

**(B)** Depository agreements and supplemental agreements required to create an enforceable perfected security in collateral for deposits shall be updated at the time a new treasurer takes office.

**(C)** Except as provided under subdivision (a)(3)(A) of this section, agreements required to be signed by all members of a depository board shall be changed at the time of membership change on the depository board.

**(b)(1)** The treasurers or other public officials or other persons having custody of public funds shall deposit those public funds into the designated depositories.

**(2)** The depositing of public funds as required under subdivision (b)(1) of this section into the designated depositories shall relieve the public officer or other person and his or her sureties from any liability for the loss of public funds by reason of the default or insolvency of any depository.

**(3)** County officials shall make timely deposit and investment of public funds to earn optimum interest consistent with the prudent investor rule defined by Arkansas law.

**(c) (1)** County and municipal officials shall:

**(A)** Require security for the deposit of public funds in the form of a demand deposit, a savings deposit, or a time deposit for amounts not fully insured directly by the United States; and

**(B)** Enter into supplemental agreements with each depository banking institution that satisfy the requirements of this subsection.

**(2)(A)** The Treasurer of State shall make available upon request to any county or municipality fillable depository agreement forms designed for county and municipal governments and any necessary supplemental agreement forms required for collateralizing public funds.

**(B)** The forms shall include language necessary to create an enforceable perfected security interest in all collateral for deposits.

**(3)** Depository boards and banks or banking institutions giving or holding collateral for deposits of public funds shall comply with federal laws and regulations so that the governmental entity or political subdivision depositing public funds holds a valid claim in deposits and collateral given for those deposits against, and prevent avoidance of

such a claim by, the Federal Deposit Insurance Corporation or its successor or any similar deposit insurance agency acting as receiver, conservator, or in any other capacity.

(4) All security required under this subsection shall meet the requirements of an eligible security under §19-8-203 and § 23-47-203(c).

(5) Public officials may require as a condition for placing deposits or keeping funds on deposit such financial data as they need to make an informed decision, including without limitation quarterly financial statements, quarterly profit and loss statements, and tangible net worth or capital-to-assets ratios.

ACA 19-8-107 (As recently amended by Act 310 of 2019)

**Additional Authority for Investment of Public Funds -**

(a) Notwithstanding any law to the contrary, including §§ 19-8-103 and 19-8-105, the state or local government and any trusts established under the Local Government Joint Investment Trust Act, § 19-8-301 et seq., may invest public funds through an eligible bank under § 19-8-105 if:

(1) The bank arranges for the deposit of all or a portion of the funds into one (1) or more banks or savings and loan associations located inside the United States for the account of the state or local government or trust;

(2) Each deposit is insured by the Federal Deposit Insurance Corporation for one hundred percent (100%) of the principal and accrued interest of the deposit;

(3) The bank acts as custodian of the deposits made for the account of the state or local government or trust and, as custodian, is charged with the care of the deposits and their segregation in appropriate records reflecting the total principal amount of the deposits for each custodial account; and

(4) On the date the funds are deposited according to subdivision (a)(1) of this section, the bank receives an amount of deposits from customers of other financial institutions located inside the United States that is equal to or greater than the amount of the funds invested by the state or local government or trust.

(b) For any investment of public funds under this section, the provisions of §§ 19-8-06 and 19-8-107 apply only to the eligible bank selected under subsection (a) of this section.

(c) Additional security shall not be required for investments of public funds under this section.

(d) As used in this section, "local government" means any city, county, town, or other political subdivision of the State of Arkansas, including, but not limited to, any:

(1) School district or community college district;

(2) Improvement or other taxing or assessing district;

(3) Department, instrumentality, or agency of any city, county, or other political subdivision, including, but not limited to, any local fire and police pension or relief funds; and

(4) Local government association as defined in § 19-8-303. ACA 19-8-111

**Eligible Security for Deposits -** (a) Whenever, pursuant to any statute of the state, any depository in the State of Arkansas must furnish security for the deposit of any public funds or whenever any security must be granted to

any public official in connection with public funds the following shall be considered as eligible security for such purposes and subject to the depositor's discretion regarding the suitability of the collateral:

(1) The pledge or escrow of the assets of the bank consisting of any investment in which a state bank may invest pursuant to § 23-47-401;

(2) A surety bond issued by an insurance company licensed under the laws of the State of Arkansas and either:

(A) Rated "A" or better by any one (1) or more of the following rating agencies:

(i) A.M. Best Company, Inc.;

(ii) Standard & Poor's Insurance Rating Service;

(iii) Moody's Investors Service, Inc.; or

(iv) Duff & Phelps Credit Rating Co.; or

(B) Listed on the then-current United States Department of the Treasury Listing of Approved Sureties;

(3) Private deposit insurance issued by an insurance company licensed under the laws of the State of Arkansas and either:

(A) Rated "A" or better by any one (1) or more of the following rating agencies:

(i) A.M. Best Company, Inc.;

(ii) Standard & Poor's Insurance Rating Service;

(iii) Moody's Investors Service, Inc.; or

(iv) Duff & Phelps Credit Rating Co.; or

(B) Listed on the then-current United States Department of the Treasury Listing of Approved Sureties; or

(4) An irrevocable standby letter of credit issued by a Federal Home Loan Bank.

(b) The aggregate market value of assets pledged or escrowed or the face amount of the surety bond, private deposit insurance, or letter of credit securing the deposit of funds by any single depositor must be equal to or exceed the amount of the deposit to be secured.

(c) Notwithstanding subdivision (a)(1) of this section, if any political subdivision, school district, improvement district, or other issuer has defaulted on any bonds or other obligations within the preceding period of ten (10) years, bonds or other obligations of the defaulting political subdivision, school district, improvement district, or other issuer shall not be eligible as security for the deposit of public funds or as security required to be deposited in connection with public funds. ACA 19-8-203

**Moneys From Veterans Treatment Specialty Court Program -**

(5)(A) All court costs and veterans' treatment specialty court program user fees assessed by the veteran's treatment specialty court judge shall be paid to the court clerk for remittance to the county treasury under § 14-14-1313. See A.C.A. § 16-101-104.

Act 58 of 2021 provided an ability for circuit courts to create a veterans treatment specialty court program under A.C.A. § 16-101-101. Act 58 of 2021 also created the processes and details of veteran's treatment specialty court programs. Per § 16-101-104, court costs and user fees from the program are paid to the county clerk and remitted into the county treasury.

**Improvement and Protection Districts Reporting Requirements for Collection of Assessments - (D)**

The improvement district or protection district shall deliver a filed copy of the report to the county collector, county assessor, and county treasure within five (5) days of filing...

**(2)** The report shall contain the following information for the preceding fiscal year: ... **(1)** Information concerning to whom the county treasurer is to pay improvement district or protection district assessments....

**(6)** If an improvement district or protection district has failed to file the annual report required under this section, the county treasurer shall withhold disbursement of any funds collected through assessments until receipt of the most recent annual report required under this section. A.C.A. § 14-86-2102

Improvement districts and protection districts that use or intend to use the county collector for collecting their assessments are required to file with the applicable county clerk an Annual Report for the prior fiscal year as required under A.C.A. § 14-86-103 and A.C.A. § 14-86-2102. Pursuant to A.C.A. § 14-86-2102, a filed copy of the Annual Report must be delivered to the County Treasurer within five (5) days of being filed. The County Treasurer is also required to pay the assessments to an applicable entity, which is described in the Annual Report. The Annual Report is supposed to contain information about to who the County Treasurer is to pay the received assessments. If the Annual Report is not filed by an improvement or protection district, the County Treasurer is given the power to withhold disbursement of any funds collected through assessments until the Annual Report is received.

## Chapter Three - TIMETABLE

This section is included to assist County Treasurers by outlining some of the important activities of the office and placing them in a calendar format. This allows the treasurer or member of his or her staff to review the major activities of the office. The various activities are listed in the month in which they should take place and the Arkansas Code Annotated reference is listed for each.

### **JANUARY**

Fees and fines collected to be deposited with the Treasurer on the first day of each month and no later than the tenth day of each month from other county officials and county departments, including district court. ACA 21-6-310 and 16-10-209

Receive all money paid to the county treasury on the first of each month or within ten days thereafter from other county officials. ACA 26-39-201

On or before the 15<sup>th</sup> day of each month, the county treasurer shall remit to the DF&A all court costs and fees required by ACA 16-10-307 et seq. [Admin of Justice]

Monthly financial reports submitted to Quorum Court. ACA 14-20-105

On or before the 10<sup>th</sup> of the month following the end of each calendar quarter, receive severance tax from the State Treasurer and distribute. The disposition of what was commonly called the "25% Severance" [severance taxes, penalties and costs on timber and timber products] is regulated by § 26-58-124 and is divided 50% to Common School and 50% to Road. The allocation of the "Additional 25% Severance Tax" [severance tax on stone and crushed stoned] is regulated by § 26-58-113 and is also divided 50% to Common School and 50% Road. *These severance taxes are reported to you by the State Treasurer as "Severance Tax".*

The Severance Tax that is credited to the Common School Fund is apportioned by the County Treasurer to the school districts in the county based upon the average daily membership [ADM] of the districts within the county on a pro rate basis.

The disposition of what has historically been called "Additional 75% Severance" [severance tax on stone and crushed stone] is controlled by § 26-58-113. This severance tax is credited to the Road Fund 100% and is *reported to the county treasurer by the State Treasurer as "Additional Severance".*

Receive "Boating Safety" funds from State Treasurer and credit to the Boating Safety Enforcement Fund or the County Emergency Rescue Fund. ACA 27-101-111

Receive Highway Turnback by electronic transfer from the State Treasurer's County Aid Fund by the tenth day of each month, a dedicated revenue to be deposited to the Road Fund. ACA 27-70-207

Receive severance tax on natural gas by electronic transfer from the State Treasurer by the tenth day of each month, a dedicated revenue to be deposited to the Road Fund. ACA 26-58-124 and 27-70-201 et seq.

Receive General Turnback by electronic transfer from the State Treasurer's County Aid Fund by the tenth day of each month for deposit to the County General Fund to be used for general county purposes, unless otherwise appropriated by the quorum court. ACA 19-5-602 [*In January every county receives their pro rata share of an additional \$2 million General Turnback payment funded from the previous year-end balance of the Property Tax Relief Fund.*]

Receive Amendment 79 funds for the Assessor from the State Treasurer. This is your county's share of 1% of the excess funds in the Property Tax Relief Trust Fund as of December 31 of the previous year. The money is for allocation to the Assessor for the costs of administering Arkansas Constitution, Amendment 79. ACA 26-26-310

Receive and distribute County Property Tax Relief Funds. ACA 26-26-310

Distribute tax money monthly received from land redemptions, delinquent personal and current tax after receipt of certificate of distribution from County Clerk or other appointed official. ACA 26-36-209, ACA 26-37-109, ACA 26-37-205, ACA 26-39-201, ACA 26-39-406

Receive local sales taxes by electronic transfer from the State Treasurer - usually on the 22<sup>nd</sup> to 25<sup>th</sup> of each month.

Monthly either the Treasurer or District Court Clerk shall file a report and forward all game and fish fines collected to the Arkansas Game & Fish Commission on forms provided by the Commission. ACA 15-41-209

Reconcile, on a monthly basis, the bank balance of all bank accounts to the treasurer's book balance. The book balance is what the treasurer is trying to prove. Reconciliations shall be retained and filed with the bank statements. ACA 14-25-107 and 14-25-114(a)(5) *Note: With on-line banking reconciliation is easily accomplished more often than monthly - even daily with the official monthly reconciliation at month end.*

Compile a Security Pledge Report at the end of the month to ascertain that all county deposits are properly collateralized. *Note: This should be kept up with daily to protect the county's deposits but an end of the month report should be compiled showing the EOM market value of the pledged collateral.*

By January 31 of each year the county treasurer should provide an annual summary report of all proceeds generated from ad valorem tax and distributed by the county to the school districts for the previous calendar year

January through December. A copy of this report is to be filed with the Treasurer of State; the Department of Education; and the Superintendents of the school districts to which the proceeds were distributed. ACA 26-80-101

## **FEBRUARY**

Fees and fines collected to be deposited with the Treasurer on the first day of each month and no later than the tenth day of the month from other county officials and county departments, including district court. ACA 21-6-310 and 16-10-209

Receive all money paid to the county treasury on the first of each month or within ten days thereafter from other county officials. ACA 26-39-201

On or before the 15<sup>th</sup> day of each month, the county treasurer shall remit to the DF&A all court costs and fees required by ACA 16-10-307 et seq. [Admin of Justice]

Monthly financial reports submitted to Quorum Court. ACA 14-20-105

Receive highway turnback by electronic transfer from the State Treasurer's County Aid Fund by the tenth day of each month, a dedicated revenue to be deposited to the Road Fund. ACA 27-70-207

Receive severance tax on natural gas by electronic transfer from the State Treasurer by the tenth day of each month, a dedicated revenue to be deposited to the Road Fund. ACA 26-58-124 and 27-70-201 et seq.

Receive General Turnback by electronic transfer from the State Treasurer's County Aid Fund by the tenth day of each month for deposit to the County General Fund to be used for general county purposes, unless otherwise appropriated by the quorum court. ACA 19-5-602

Receive and distribute County Property Tax Relief Funds. ACA 26-26-310

Distribute tax money monthly received from land redemptions, delinquent personal and current tax after receipt of certificate of distribution from County Clerk or other appointed official. ACA 26-36-209, ACA 26-37-109, ACA 26-37-205, ACA 26-39-201, ACA 26-39-406

Receive local sales taxes by electronic transfer from the State Treasurer - usually on the 22<sup>nd</sup> to 25<sup>th</sup> of each month.

Monthly either the Treasurer or District Court Clerk shall file a report and forward all game and fish fines collected to the Arkansas Game & Fish Commission on forms provided by the Commission. ACA 15-41-209

Reconcile, on a monthly basis, the bank balance of all bank accounts to the treasurer's book balance. The book balance is what the treasurer is trying to prove. Reconciliations shall be retained and filed with the bank statements. ACA 14-25-107 and 14-25-114(a)(5) *Note:*

*With on-line banking reconciliation is easily accomplished more often than monthly – even daily with the official monthly reconciliation at month end.*

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## **MARCH**

Fees and fines collected to be deposited with the Treasurer on the first day of each month and no later than the tenth day of the month from other county officials and county departments, including district court. ACA 21-6-310 and 16-10-209

Receive all money paid to the county treasury on the first of each month or within ten days thereafter from other county officials. ACA 26-39-201

On or before the 15<sup>th</sup> day of each month, the county treasurer shall remit to the DF&A all court costs and fees required by ACA 16-10-307 et seq. [Admin of Justice]

Monthly financial reports submitted to Quorum Court. ACA 14-20-105

The county annual financial report must be published by March 15 of each year for the previous fiscal year. It is a joint responsibility of the county clerk and county treasurer to compile the annual financial report. The cost of the publication may be prorated equally between the clerk and the treasurer. ACA 14-21-102

Receive highway turnback by electronic transfer from the State Treasurer's County Aid Fund by the tenth day of each month, a dedicated revenue to be deposited to the Road Fund. ACA 27-70-207

Receive severance tax on natural gas by electronic transfer from the State Treasurer by the tenth day of each month, a dedicated revenue to be deposited to the Road Fund. ACA 26-58-124 and 27-70-201 et seq.

Receive General Turnback by electronic transfer from the State Treasurer's County Aid Fund by the tenth day of each month for deposit to the County General Fund to be used for general county purposes, unless otherwise appropriated by the quorum court. ACA 19-5-602

Receive and distribute County Property Tax Relief Funds. (ACA 26-26-310)

Distribute tax money monthly received from land redemptions, delinquent personal and current tax after receipt of certificate of distribution from County Clerk or other appointed official. ACA 26-36-209, ACA 26-37-109, ACA 26-37-205, ACA 26-39-201, ACA 26-39-406

Receive local sales taxes by electronic transfer from the State Treasurer - usually on the 22<sup>nd</sup> to 25<sup>th</sup> of each month.

Monthly either the Treasurer or District Court Clerk shall file a report and forward all game and fish fines collected to the Arkansas Game & Fish Commission on forms provided by the Commission. ACA 15-41-209

Reconcile, on a monthly basis, the bank balance of all bank accounts to the treasurer's book balance. The book balance is what the treasurer is trying to prove. Reconciliations shall be retained and filed with the bank statements. ACA 14-25-107 and 14-25-114(a)(5) *Note: With on-line banking reconciliation is easily accomplished more often than monthly - even daily with the official monthly reconciliation at month end.*

Compile a Security Pledge Report at the end of the month to ascertain that all county deposits are properly collateralized. *Note: This should be kept up with daily to protect the county's deposits but an end of the month report should be compiled showing the EOM market value of the pledged collateral.*

#### **APRIL**

Fees and fines collected to be deposited with the Treasurer on the first day of each month and no later than the tenth day of the month from other county officials and county departments, including district court. ACA 21-6-310 and 16-10-209

Receive all money paid to the county treasury on the first of each month or within ten days thereafter from other county officials. ACA 26-39-201

On or before the 15<sup>th</sup> day of each month, the county treasurer shall remit to the DF&A all court costs and fees required by ACA 16-10-307 et seq. [Admin of Justice]

Monthly financial reports submitted to Quorum Court. ACA 14-20-105

On or before the 10<sup>th</sup> of the month following the end of each calendar quarter, receive severance tax from the State Treasurer and distribute. The disposition of what was commonly called the "25% Severance" [severance taxes, penalties and costs on timber and timber products] is regulated by § 26-58-124 and is divided 50% to Common School and 50% to Road. The allocation of the "Additional 25% Severance Tax" [severance tax on stone and crushed stoned] is regulated by § 26-58-113 and is also divided 50% to Common School and 50% Road. *These severance taxes are reported to you by the State Treasurer as "Severance Tax".*

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The disposition of what has historically been called "Additional 75% Severance" [severance tax on stone and

crushed stone] is controlled by § 26-58-113. This severance tax is credited to the Road Fund 100% and is reported to the county treasurer by the State Treasurer as "Additional Severance".

Receive "Boating Safety" funds from State Treasurer and credit to the Boating Safety Enforcement Fund or the County Emergency Rescue Fund. ACA 27-101-111

Receive highway turnback by electronic transfer from the State Treasurer's County Aid Fund by the tenth day of each month, a dedicated revenue to be deposited to the Road Fund. ACA 27-70-207

Receive severance tax on natural gas by electronic transfer from the State Treasurer by the tenth day of each month, a dedicated revenue to be deposited to the Road Fund. ACA 26-58-124 and 27-70-201 et seq.

Receive General Turnback by electronic transfer from the State Treasurer's County Aid Fund by the tenth day of each month for deposit to the County General Fund to be used for general county purposes, unless otherwise appropriated by the quorum court. ACA 19-5-602

Receive and distribute County Property Tax Relief Funds. ACA 26-26-310

Distribute tax money monthly received from land redemptions, delinquent personal and current tax after receipt of certificate of distribution from County Clerk or other appointed official. ACA 26-36-209, ACA 26-37-109, ACA 26-37-205, ACA 26-39-201, ACA 26-39-406

Receive local sales taxes by electronic transfer from the State Treasurer - usually on the 22<sup>nd</sup> to 25<sup>th</sup> of each month.

Monthly either the Treasurer or District Court Clerk shall file a report and forward all game and fish fines collected to the Arkansas Game & Fish Commission on forms provided by the Commission. ACA 15-41-209

Reconcile, on a monthly basis, the bank balance of all bank accounts to the treasurer's book balance. The book balance is what the treasurer is trying to prove. Reconciliations shall be retained and filed with the bank statements. ACA 14-25-107 and 14-25-114(a)(5) *Note: With on-line banking reconciliation is easily accomplished more often than monthly - even daily with the official monthly reconciliation at month end.*

Compile a Security Pledge Report at the end of the month to ascertain that all county deposits are properly collateralized. *Note: This should be kept up with daily to protect the county's deposits but an end of the month report should be compiled showing the EOM market value of the pledged collateral.*

#### **MAY**

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departments, including district court. ACA 21-6-310 and 16-10-209

Receive all money paid to the county treasury on the first of each month or within ten days thereafter from other county officials. ACA 26-39-201

On or before the 15<sup>th</sup> day of each month, the county treasurer shall remit to the DF&A all court costs and fees required by ACA 16-10-307 et seq. [Admin of Justice]

Monthly financial reports submitted to Quorum Court. ACA 14-20-105

Receive highway turnback by electronic transfer from the State Treasurer's County Aid Fund by the tenth day of each month, a dedicated revenue to be deposited to the Road Fund. ACA 27-70-207

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## **JUNE**

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Receive all money paid to the county treasury on the first of each month or within ten days thereafter from other county officials. ACA 26-39-201

On or before the 15<sup>th</sup> day of each month, the county treasurer shall remit to the DF&A all court costs and fees required by ACA 16-10-307 et seq. [Admin of Justice]

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## **JULY**

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Receive all money paid to the county treasury on the first of each month or within ten days thereafter from other county officials. ACA 26-39-201

On or before the 15<sup>th</sup> day of each month, the county treasurer shall remit to the DF&A all court costs and fees required by ACA 16-10-307 et seq. [Admin of Justice]

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dedicated revenue to be deposited to the Road Fund. ACA 26-58-124 and 27-70-201 et seq.

Receive General Turnback by electronic transfer from the State Treasurer's County Aid Fund by the tenth day of each month for deposit to the County General Fund to be used for general county purposes, unless otherwise appropriated by the quorum court. ACA 19-5-602

In July there are three (3) general turnback distributions: (1) regular distribution; (2) a one month advance to help counties meet cash flow needs (The loan is repaid in equal installments from general turnback distributions each month during the fiscal year for which the loan was made.); and (3) the Real Estate Transfer Tax Distribution from Administration of Justice. ACA 26-60-112

Receive and distribute County Property Tax Relief Funds. ACA 26-26-310

Distribute tax money monthly received from land redemptions, delinquent personal and current tax after receipt of certificate of distribution from County Clerk or other appointed official. ACA 26-36-209, ACA 26-37-109, ACA 26-37-205, ACA 26-39-201, ACA 26-39-406

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Compile a Security Pledge Report at the end of the month to ascertain that all county deposits are properly collateralized. *Note: This should be kept up with daily to protect the county's deposits but an end of the month report should be compiled showing the EOM market value of the pledged collateral.*

## **AUGUST**

Fees and fines collected to be deposited with the Treasurer on the first day of each month and no later than the tenth day of the month from other county officials and county departments, including district court. ACA 21-6-310 and 16-10-209

Receive all money paid to the county treasury on the first of each month or within ten days thereafter from other county officials. ACA 26-39-201



On or before the 15<sup>th</sup> day of each month, the county treasurer shall remit to the DF&A all court costs and fees required by ACA 16-10-307 et seq. [Admin of Justice]

Monthly financial reports submitted to Quorum Court. ACA 14-20-105

Distribute tax money monthly received from land redemptions, delinquent personal and current tax after receipt of certificate of distribution from County Clerk or other appointed official. ACA 26-36-209, ACA 26-37-109, ACA 26-37-205, ACA 26-39-201, ACA 26-39-406

Receive highway turnback by electronic transfer from the State Treasurer's County Aid Fund by the tenth day of each month, a dedicated revenue to be deposited to the Road Fund. ACA 27-70-207

Receive severance tax on natural gas by electronic transfer from the State Treasurer by the tenth day of each month, a dedicated revenue to be deposited to the Road Fund. ACA 26-58-124 and 27-70-201 et seq.

Receive General Turnback by electronic transfer from the State Treasurer's County Aid Fund by the tenth day of each month for deposit to the County General Fund to be used for general county purposes, unless otherwise appropriated by the quorum court. ACA 19-5-602

Receive and distribute County Property Tax Relief Funds. ACA 26-26-310

Receive local sales taxes by electronic transfer from the State Treasurer - usually on the 22<sup>nd</sup> to 25<sup>th</sup> of each month.

Monthly either the Treasurer or District Court Clerk shall file a report and forward all game and fish fines collected to the Arkansas Game & Fish Commission on forms provided by the Commission. ACA 15-41-209

Reconcile, on a monthly basis, the bank balance of all bank accounts to the treasurer's book balance. The book balance is what the treasurer is trying to prove. Reconciliations shall be retained and filed with the bank statements. ACA 14-25-107 and 14-25-114(a)(5) *Note: With on-line banking reconciliation is easily accomplished more often than monthly - even daily with the official monthly reconciliation at month end.*

Compile a Security Pledge Report at the end of the month to ascertain that all county deposits are properly collateralized. *Note: This should be kept up with daily to protect the county's deposits but an end of the month report should be compiled showing the EOM market value of the pledged collateral.*

## **SEPTEMBER**

Fees and fines collected to be deposited with the Treasurer on the first day of each month and no later than the tenth day of the month from other county officials and county departments, including district court. ACA 21-6-310 and 16-10-209

Receive all money paid to the county treasury on the first of each month or within ten days thereafter from other county officials. ACA 26-39-201

On or before the 15<sup>th</sup> day of each month, the county treasurer shall remit to the DF&A all court costs and fees required by ACA 16-10-307 et seq. [Admin of Justice]

Monthly financial reports submitted to Quorum Court. ACA 14-20-105

Distribute tax money monthly received from land redemptions, delinquent personal and current tax after receipt of certificate of distribution from County Clerk or other appointed official. ACA 26-36-209, ACA 26-37-109, ACA 26-37-205, ACA 26-39-201, ACA 26-39-406

Receive highway turnback by electronic transfer from the State Treasurer's County Aid Fund by the tenth day of each month, a dedicated revenue to be deposited to the Road Fund. ACA 27-70-207

Receive severance tax on natural gas by electronic transfer from the State Treasurer by the tenth day of each month, a dedicated revenue to be deposited to the Road Fund. ACA 26-58-124 and 27-70-201 et seq.

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Receive and distribute County Property Tax Relief Funds. ACA 26-26-310

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Monthly either the Treasurer or District Court Clerk shall file a report and forward all game and fish fines collected to the Arkansas Game & Fish Commission on forms provided by the Commission. ACA 15-41-209

Reconcile, on a monthly basis, the bank balance of all bank accounts to the treasurer's book balance. The book balance is what the treasurer is trying to prove. Reconciliations shall be retained and filed with the bank statements. ACA 14-25-107 and 14-25-114(a)(5) *Note: With on-line banking reconciliation is easily accomplished more often than monthly - even daily with the official monthly reconciliation at month end.*

Compile a Security Pledge Report at the end of the month to ascertain that all county deposits are properly collateralized. *Note: This should be kept up with daily to protect the county's deposits but an end of the month report should be compiled showing the EOM market value of the pledged collateral.*

## **OCTOBER**

Fees and fines collected to be deposited with the Treasurer on the first day of each month and no later than the tenth day of the month from other county officials and county departments, including district court. ACA 21-6-310 and 16-10-209

Receive all money paid to the county treasury on the first of each month or within ten days thereafter from other county officials. ACA 26-39-201

On or before the 15<sup>th</sup> day of each month, the county treasurer shall remit to the DF&A all court costs and fees required by ACA 16-10-307 et seq. [Admin of Justice]

Monthly financial reports submitted to Quorum Court. ACA 14-20-105

On or before the 10<sup>th</sup> of the month following the end of each calendar quarter, receive severance tax from the State Treasurer and distribute. The disposition of what was commonly called the "25% Severance" [severance taxes, penalties and costs on timber and timber products] is regulated by § 26-58-124 and is divided 50% to Common School and 50% to Road. The allocation of the "Additional 25% Severance Tax" [severance tax on stone and crushed stoned] is regulated by § 26-58-113 and is also divided 50% to Common School and 50% Road. *These severance taxes are reported to you by the State Treasurer as "Severance Tax".*

The Severance Tax that is credited to the Common School Fund is apportioned by the County Treasurer to the school districts in the county based upon the average daily membership [ADM] of the districts within the county on a pro rate basis.

The disposition of what has historically been called "Additional 75% Severance" [severance tax on stone and crushed stone] is controlled by § 26-58-113. This severance tax is credited to the Road Fund 100% and is reported to the county treasurer by the State Treasurer as "Additional Severance".

Receive "Boating Safety" funds from State Treasurer and credit to the Boating Safety Enforcement Fund or the County Emergency Rescue Fund. ACA 27-101-111

Receive highway turnback by electronic transfer from the State Treasurer's County Aid Fund by the tenth day of each month, a dedicated revenue to be deposited to the Road Fund. ACA 27-70-207

Receive severance tax on natural gas by electronic transfer from the State Treasurer by the tenth day of each month, a dedicated revenue to be deposited to the Road Fund. ACA 26-58-124 and 27-70-201 et seq.

Receive General Turnback by electronic transfer from the State Treasurer's County Aid Fund by the tenth day of each month for deposit to the County General Fund to be used for general county purposes, unless otherwise appropriated by the quorum court. ACA 19-5-602

Receive and distribute County Property Tax Relief Funds. ACA 26-26-310

Distribute tax money monthly received from land redemptions, delinquent personal and current tax after receipt of certificate of distribution from County Clerk or other appointed official. ACA 26-36-209, ACA 26-37-109, ACA 26-37-205, ACA 26-39-201, ACA 26-39-406

Receive local sales taxes by electronic transfer from the State Treasurer - usually on the 22<sup>nd</sup> to 25<sup>th</sup> of each month.

Monthly either the Treasurer or District Court Clerk shall file a report and forward all game and fish fines collected to the Arkansas Game & Fish Commission on forms provided by the Commission. ACA 15-41-209

Reconcile, on a monthly basis, the bank balance of all bank accounts to the treasurer's book balance. The book balance is what the treasurer is trying to prove. Reconciliations shall be retained and filed with the bank statements. ACA 14-25-107 and 14-25-114(a)(5) *Note: With on-line banking reconciliation is easily accomplished more often than monthly - even daily with the official monthly reconciliation at month end.*

Compile a Security Pledge Report at the end of the month to ascertain that all county deposits are properly collateralized. *Note: This should be kept up with daily to protect the county's deposits but an end of the month report should be compiled showing the EOM market value of the pledged collateral.*

## **NOVEMBER**

Fees and fines collected to be deposited with the Treasurer on the first day of each month and no later than the tenth day of the month from other county officials and county departments, including district court. ACA 21-6-310 and 16-10-209

Receive all money paid to the county treasury on the first of each month or within ten days thereafter from other county officials. ACA 26-39-201

On or before the 15<sup>th</sup> day of each month, the county treasurer shall remit to the DF&A all court costs and fees required by ACA 16-10-307 et seq. [Admin of Justice]

Monthly financial reports submitted to Quorum Court. ACA 14-20-105

Distribute tax money monthly received from land redemptions, delinquent personal and current tax after receipt of certificate of distribution from County Clerk or other appointed official. ACA 26-36-209, ACA 26-37-109, ACA 26-37-205, ACA 26-39-201, ACA 26-39-406

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Receive General Turnback by electronic transfer from the State Treasurer's County Aid Fund by the tenth day of each month for deposit to the County General Fund to be used for general county purposes, unless otherwise appropriated by the quorum court. ACA 19-5-602

Receive and distribute County Property Tax Relief Funds. (ACA 26-26-310)

Receive local sales taxes by electronic transfer from the State Treasurer - usually on the 22<sup>nd</sup> to 25<sup>th</sup> of each month.

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## **DECEMBER**

Fees and fines collected to be deposited with the Treasurer on the first day of each month and no later than the tenth day of the month from other county officials and county departments, including district court. ACA 21-6-310 and 16-10-209

Receive all money paid to the county treasury on the first of each month or within ten days thereafter from other county officials. ACA 26-39-201

On or before the 15<sup>th</sup> day of each month, the county treasurer shall remit to the DF&A all court costs and fees required by ACA 16-10-307 et seq. [Admin of Justice]  
Monthly financial reports submitted to Quorum Court. ACA 14-20-105

Distribute tax money monthly received from land redemptions, delinquent personal and current tax after receipt of certificate of distribution from County Clerk or other appointed official. ACA 26-36-209, ACA 26-37-109, ACA 26-37-205, ACA 26-39-201, ACA 26-39-406

In addition to the normal monthly tax settlements, the Final Tax Settlement is to be filed with the County Court on or before the fourth Monday in December. The County Court [County Judge] must approve, reject or restate the final tax settlement for distribution on or before December 31. The County Treasurer distributes the Final Tax Settlement.

Receive highway turnback by electronic transfer from the State Treasurer's County Aid Fund by the tenth day of each month, a dedicated revenue to be deposited to the Road Fund. ACA 27-70-207

Receive severance tax on natural gas by electronic transfer from the State Treasurer by the tenth day of each month, a dedicated revenue to be deposited to the Road Fund. ACA 26-58-124 and 27-70-201 et seq.

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Compile a Security Pledge Report at the end of the month to ascertain that all county deposits are properly collateralized. *Note: This should be kept up with daily to protect the county's deposits but an end of the month report should be compiled showing the EOM market value of the pledged collateral.*

Remit all balances not belonging to the County and awaiting clearance on or before December 31. ACA 14-25-114

**Note: The following Treasurer check-list is not all inclusive. It is provided as a start-list for your office. Although many of the items on this list will be duties performed in every County Treasurer office, you may find some that do not apply to your county. And you will learn that there are items not on this list that should be for your county. But it is good to develop a check list for your office. A new Treasurer will find that**

they need it, at least for a while, to make sure every function is performed. It is also a good tool for your deputy or deputies - especially

when the time comes that you have to hire new personnel.

## COUNTY TREASURER'S OFFICE

### CHECK LIST OF THINGS TO BE DONE

#### CHECKS MONTHLY

CRIME LAB / LAW SCHOOL

COUNTY ADMIN OF JUSTICE

UNIFORM RATE OF TAX OUT

SCHOOL CHECKS

CITY CHECKS

#### CHECKS QUARTERLY

TIMBER TAX-ARK FORESTRY COMMISSION (MAR, JUNE, SEPT, DEC)

#### DIRECT DEPOSITS

GENERAL REVENUE TURNBACK

HIGHWAY REVENUE TURNBACK

REAL ESTATE TRANSFER TAX

1% PROPERTY TAX RELIEF-ASSESSOR

SEVERANCE TAX

PILT

BOATING SAFETY-EMERGENCY & RESCUE

PROPERTY TAX RELIEF

STATE LAND SALES / REDEMPTION

STATE SALES TAX

COUNTY SALES AND USE TAX

SOCIAL SECURITY ADMIN

UNIFORM RATE OF TAX

ARKANSAS BANKER' BANK INTEREST

BANK'S CHECKING INTEREST

CENTURYLINK

REAL PROPERTY REAPPRAISAL

MONTHLY REPORTS

TRANSFER STATION STATEMENTS

COUNTY CLERK

CIRCUIT CLERK

SHERIFF

DISTRICT COURT

DISTRICT COURT PROBATION FEE

TAX COLLECTOR

LIBRARY REPORTS

COUNTY ADMIN OF JUSTICE

CRIME LAB / LAW SCHOOL

FINANCIAL REPORT

PLEDGE REPORT

BANKS PROOF OF CASH

BANK STATEMENTS

LOTTERY SALES

COUNTY SALES TAX LEDGERS

BOND LEDGER UPDATES

DEPOSITORY BOARD UPDATES

MONTHLY SUMMARY TO BALANCE WITH COUNTY CLERK

ALL MONTHLY LEDGERS TO KEEP

SAFETY REPORT / FIREEXTINGUISHER

REPORTS DURING THE YEAR

DRUG CONTROL - JANUARY AND JULY

REAL PROPERTY REAPPRAISAL-MAR, JUNE, SEPT ,DEC (YTD)

TAX DISTRIBUTIONS

CURRENT TAXES

DELINQUENT PERSONAL

DELINQUENT REAL

DELINQUENT IMPROVEMENT

INTEREST DISTRIBUTION

PROPERTY TAX RELIEF

STATE LAND SALES
REAL PROPERTY REAPPRAISAL
SEVERANCE TAXES
COUNTY SALES AND USE TAX
COMMON SCHOOL

<u>MONTHLY TRANSFERS / OR APPROPRIATED TRANSFERS</u>
COUNTY ADMIN OF JUSTICE
10% TREASURER'S COMMISSION
COUNTY SHERIFF'S OFFICE FUND TRANSFER
APPROPRIATED TRANSFERS

<u>INVOICES MONTHLY</u>
DISTRICT COURT
JUVENILE PROBATION-COUNTY GENERAL
WESTLAW
<u>DAILY DUTIES</u>
RECEIPTS
DEPOSITS
CHECKS
TRANSFERS
TAX DISTRIBUTIONS
SOLID WASTE WORK
SOLID WASTE HISTORY
BALANCE DAILY IF POSSIBLE
ORDINANCES - UPDATED
RESOLUTIONS - UPDATED
CONDITIONS OF BANKS

## Chapter Four - RECORD RETENTION SCHEDULE

### **13-4-201. Electronic reproduction of court records.**

Court clerks and any other public officers whose duty it is to make and maintain court records are authorized to use and employ an approved system of photographic recording, photostatic recording, microfilm, microcard, miniature photographic recording, digital compact disc, optical disc, and any other process that accurately reproduces or forms a durable medium for reproducing the original.

### **13-4-202. Requirements for format and storage of records.**

When equipment necessary for such methods of recording is used to record court records, it shall meet all of the following requirements:

(1) The information retained shall be in a usable and accessible format capable of accurately reproducing the original over the time periods specified in § 13-4-301 et seq.;

(2) Operational procedures shall ensure that the authenticity, confidentiality, accuracy, reliability, and appropriate level of security are provided to safeguard the integrity of the information;

(3) Procedures shall be available for the backup, recovery, and storage of records to protect those records against media destruction or deterioration and information loss; and

(4) A retention conversion-review schedule shall be established to ensure that electronically or optically stored information is reviewed for data conversion or recertification at least one (1) time every five (5) years or more frequently when necessary to prevent the physical loss of data or technological obsolescence of the medium.

### **13-4-204. Destruction of original.**

(a) When any document is recorded by the means prescribed by § 13-4-201, the paper original may be destroyed unless the document is over fifty (50) years old and handwritten or has been determined to be of historical value by the Arkansas State Archives.

(b) If the paper original does not meet these criteria, the electronically stored document shall be considered the "original" document and shall be treated as such when proffered with the recorder's certification.

### **13-4-301. - Retention required — Destruction – Electronic Reproduction.**

(a) (1) A county shall maintain the records named in this subchapter for the period of time provided for in this subchapter, after which time the records may be destroyed.

(2) (A) The records named in this subchapter shall not be destroyed until at least one (1) year after an audit by Arkansas Legislative Audit or a private audit is completed and approved.

(B) A record named in this subchapter that is over fifty (50) years old shall not be destroyed before written notice by the custodian of the records and describing the scope and nature of the records in question has been furnished to the Arkansas State Archives, at least sixty (60) days before the destruction of the records.

(b) (1) If a record is photographically or electronically transferred to other media of a permanent nature, the original documents may be destroyed, except that no handwritten records over fifty (50) years old shall be destroyed.

(2) A county record that is photographically or electronically transferred to other media of a permanent nature shall be transferred by a process that accurately reproduces or forms a durable medium for reproducing the original.

(c) When county records are transferred to other media of a permanent nature, the resulting transfer shall meet the following requirements:

(1) The information in the county record retained shall be transferred into a usable and accessible format capable of accurately reproducing the original over the time periods specified in this section and §§ 13-4-302 – 13-4-308;

(2) Operational procedures shall ensure that the authenticity, confidentiality, accuracy, reliability, and appropriate level of security are provided to safeguard the integrity of the information in the county record;

(3) Procedures shall be available for the backup, recovery, and storage of records to protect the records against media destruction or deterioration and information loss; and

(4) A retention conversion-and-review schedule shall be established by each county official to ensure that electronically or optically stored information, for records required to be kept permanently, is reviewed for data conversion at least one (1) time every four (4) years or more frequently when necessary to prevent the physical loss of data or loss due to technological obsolescence of the medium.

(d) Before a record is destroyed, the custodian of the record shall document the date and type of document.

(e) Records not addressed explicitly under this subchapter may be destroyed no sooner than three (3) years after an audit by Arkansas Legislative Audit or any private auditor is completed and approved.

### **13-4-302. Court records.**

If a county of the State of Arkansas maintains records for the county courts, the county shall maintain these records as follows:

(1) (A) For circuit court, civil and criminal, domestic relations, and probate records:

(i) The county shall permanently maintain:

(a) Complete case files and written exhibits for all courts;

(b) Case indices for all courts;

(c) Case dockets for all courts;

(d) Grand jury reports;

(e) Grand juror lists;

(f) Petit jury lists in criminal cases;

(g) Original records, documents, and transcripts relating to the summoning of jurors and jury selection for a petit jury in a criminal case; and

(h) All probate records required to be maintained under § 28-1-108;

(ii) The county shall maintain for ten (10) years, after audit by Arkansas Legislative Audit:

(a) Records and reports of costs; and

- (b) Fees assessed and collected; and
- (iii) The county shall maintain for three (3) years, after audit by Arkansas Legislative Audit:
  - (a) Canceled checks;
  - (b) Bank statements;
  - (c) Petit jury lists in civil cases and original records, documents, and transcripts relating to the summoning of jurors and jury selection for a petit jury in a civil case; and
  - (d) Served and quashed warrants.
- (B) The county shall maintain records of the juvenile division of circuit court, in accordance with § 9-27-309 and other provisions of Title 9 and the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;
- (2) For county court records:
  - (A) The county shall permanently maintain:
    - (i) County court records;
    - (ii) Cemetery permits;
    - (iii) Statements of receipt and expenditures; and
    - (iv) County improvement district reports; and
  - (B) The county shall maintain for ten (10) years, after audit by Arkansas Legislative Audit:
    - (i) County court files;
    - (ii) County general claims dockets;
    - (iii) County road claims dockets;
    - (iv) Contracts for lease-purchase on rental payments;
    - (v) County school board financial reports;
    - (vi) Solid waste disposal revenue bonds; and
    - (vii) Allocations of state funds for solid waste disposal; and
  - (3) For quorum court records:
    - (A) The county shall permanently maintain:
      - (i) Ordinance, appropriation ordinance, and resolution registers;
      - (ii) Records of proceedings;
      - (iii) Codification of ordinances;
      - (iv) Registers of county advisory and administrative boards;
      - (v) Appointments to subordinate service districts; and
      - (vi) Quorum court minutes; and
    - (B) The county shall maintain for one (1) year the county treasurer's monthly financial report.

**13-4-303. Tax and assessment records.**

All counties of the State of Arkansas shall maintain county tax and assessment records as follows, if they are currently being maintained:

- (1) For tax and assessment records:
  - (A) Permanently maintain:
    - (i) Real estate, personal, and mineral tax book;
    - (ii) Delinquent real estate;
    - (iii) Personal property list;
    - (iv) Lands forfeited to the state, and minerals;
    - (v) Land book of state and federally owned lands;
    - (vi) Clerk's deed of land sold for taxes;
    - (vii) Journal of proceedings of the county equalization board;
    - (viii) Final settlement of tax books; and
    - (ix) Original charge for all taxing units and certification;
  - (B) Maintain for seven (7) years:
    - (i) Real estate and personal assessment record;
    - (ii) Real estate and personal tax receipts recorded in tax books; and

- (iii) Redemption certificate;
- (C) Maintain for five (5) years after rollback is complete: Certification of tax adjustment for public utilities and regulated carriers (computation of utility tax);
- (D) Maintain for three (3) years:
  - (i) Delinquent personal tax settlement;
  - (ii) Land redemption report;
  - (iii) State lands distribution; and
  - (iv) Monthly tax distribution;
- (E) Maintain for one (1) year, after audit by the Division of Legislative Audit:
  - (i) Valuation of real and personal property of utilities; and
  - (ii) Real and personal property tax correction forms;
- (2) (A) For county assessor's records, maintain for five (5) years:
  - (i) Real estate appraisal card after reappraisal;
  - (ii) Lists of names of taxpayers furnished to assessor by school boards; and
  - (iii) The personal, commercial, and industrial assessment forms.
    - (iv) Inactive homestead credit documents.
  - (B) Prior to destruction of these forms, they will be made available to the county collector;
  - (3) For county collector's records:
    - (A) Maintain permanently:
      - (i) Certified delinquent real estate list with publication certificate;
      - (ii) Certified delinquent list for real estate forfeited to the Commissioner of State Lands with publication certification;
      - (iii) Personal property tax book;
      - (iv) Certified delinquent personal property list; and
      - (v) Delinquent ad valorem tax lists for oil and gas interests;
    - (B) Maintain for ten (10) years: Tax settlements;
    - (C) Maintain for seven (7) years:
      - (i) Real estate redemption certificates;
      - (ii) Cash receipts and disbursement journal; and
      - (iii) Collector's copy of tax receipts; and
    - (D) Maintain for three (3) years:
      - (i) Daily collection reports; and
      - (ii) Dstraint of goods and garnishment to pay delinquent personal taxes.

**13-4-304. County financial records.**

All counties of the State of Arkansas shall maintain financial records for the county as follows, if they are currently being maintained:

- (1) Social Security and federal income tax records maintained per federal regulations;
- (2) State income tax records maintained per state law and rules;
- (3) Wage garnishments maintained until after a lien is satisfied;
- (4)(A) Maintain for seventy-five (75) years:
  - (i) Payroll records and ledger; and
  - (ii) Retirement records;
- (B) Maintain for ten (10) years:



- (i) Appropriation journal (record of disbursements);
- and
- (ii) Warrant register or check disbursement record;
- (C) Maintain for seven (7) years:
  - (i) County general claims certificate or invoice;
  - (ii) County road claims certificate or invoice; and
  - (iii) County school claims certificate or invoice;
- (D) Maintain for five (5) years:
  - (i) Unemployment insurance state contribution;
  - and
  - (ii) Workers' compensation insurance payment;
  - and
  - (E) Maintain for three (3) years:
    - (i) Warrants or checks, or both, with documentation;
    - (ii) Bank records for trust, agency, fee, and court accounts (bank statements and cancelled checks); and
    - (iii) Receipt books and disbursement journal;
  - (5) For county treasurer's records:
    - (A) Maintain permanently account ledgers for all accounts on the books of the treasurer;
    - (B)(i) Maintain for three (3) years:
      - (a) Receipt books;
      - (b) Bank statements and cancelled checks;
      - (c) Treasurer's monthly bank reconciliations;
      - (d) Treasurer's monthly financial report to the quorum court and the prosecuting attorney;
      - (e) Delinquent real estate and state land redemption distribution reports;
      - (f) Delinquent personal distribution reports;
      - (g) County officials' monthly reports; and
      - (h) District court monthly reports.
    - (ii) Official records of the treasurer that are necessary for audit purposes and are not required under this section may be destroyed three (3) years or more after an audit is completed and approved by Arkansas Legislative Audit or by a private auditor.

ACA 13-4-304

(As recently amended by Act 315 of 2019 & Act 66 of 2021)

**13-4-305. Recorder's records.**

All counties of the State of Arkansas shall maintain county recorder's records for the county as follows, if they are currently being maintained:

- (1) Maintain permanently:
  - (A) Deeds, mortgages, assignments, and all other conveyance records;
  - (B) Forfeited land records;
  - (C) Timber, mineral, oil and gas deeds and leases;
  - (D) Surveys;
  - (E) Subdivision plats;
  - (F) Lien records;
  - (G) Military discharge records; and
  - (H) Indices to all records; and
- (2) Maintain for ten (10) years: Notary public bonds and official appointment bonds.

**13-4-306. Voter registration and election records.**

All counties shall maintain county voter registration and election records for the county as follows, if the records are currently being maintained:

- (1) Maintained permanently:
  - (A) Voter registration record files;
  - (B) Maps of election precincts from the county board of election commissioners;
  - (C) Certificates of election; and
  - (D) Ordinance election results; and
- (2) (A) Maintained for ten (10) years, after cancelled, a person's voter registration record and reason for cancellation of a person's voter registration.
  - (B) Maintained for ten (10) years:
    - (i) Minutes of board of election commission; and
    - (ii) Election files.
  - (C) Maintained for five (5) years:
    - (i) Petition, certificate, and notices for ordinance;
    - (ii) Political practice pledges;
    - (iii) Campaign contribution and expenditure sheets;
    - (iv) Code of ethics statements; and
    - (v) Financial disclosures.
  - (D) Maintained for two (2) years:
    - (i) Acknowledgement notices giving the disposition of a person's voter registration application;
    - (ii) Precinct voter registration lists prepared for each election;
    - (iii) Confirmation notices mailed by a county clerk to confirm a voter's change of residence or name;
    - (iv) Confirmation return cards received in response to a confirmation notice; and
    - (v) Absentee ballot applications and lists, except where litigation follows or federal law governs; and
    - (vi) Voter registration cards; and
    - (E) Until an election is certified to the Secretary of State under § 7-5-701, all unused ballots.

**13-4-307. Marriage records — License and bond records.**

All counties of the State of Arkansas shall maintain county marriage records, licenses, and bonds records for the county as follows, if they are currently being maintained:

- (1) Maintain permanently:
  - (A) Marriage record and index;
  - (B) Clerical licenses and credentials;
  - (C) Medical license for physicians, physical therapists, podiatrists, osteopaths, and chiropractors; and
  - (D) Record of marks and brands;
- (2) Maintain for seven (7) years:
  - (A) Surety bonds for county and township officials (until 1986);
  - (B) County employees blanket bonds;
  - (C) Oaths and bonds of county officials; and
  - (D) Deputies, school supervisors, etc.; and
- (3) Maintain for one (1) year:
  - (A) Notice of intention to wed;
  - (B) Going-out-of-business sale license;
  - (C) Bond for going-out-of-business sale license;

- (D) Transient merchant license;
- (E) Transient merchant license bond;
- (F) Garnishment bonds; and
- (G) Mercury refiners license.

**13-4-308. Corporation records.**

All counties of the State of Arkansas shall maintain corporation records for the county, if they are currently being maintained, permanently as follows:

- (1) Articles of incorporation;
- (2) Certificate of business under assumed name;
- (3) Articles of amendment;
- (4) Registration of fictitious names of corporation;
- (5) Articles of merger or consolidation;
- (6) Change of registered office or agent;
- (7) Authorized share of stock;
- (8) Cancellation of shares; and
- (9) Certificate of dissolution of corporation.

**28-1-108. Records.**

The following records of the court shall be maintained:

- (1) An index in which files pertaining to estates of deceased persons shall be indexed under the name of the decedent, and those pertaining to guardianships under the name of the ward. The file and docket number shall be shown after the name of each file;
- (2) A docket in which shall be listed in chronological order under the name of the decedent or ward all documents filed or issued and all orders made pertaining to the estate, including:
  - (A) The dates thereof;
  - (B) The names and addresses of fiduciaries and of attorneys for parties in interest when and as known to the clerk;
  - (C) Reference to the volume and page of any record which shall have been made of the document or order; and
  - (D) Other data as the court may direct;
- (3) A record of wills, properly indexed, in which shall be recorded all wills admitted to probate with the certificate of probate thereof;
- (4) Other records as may be required by law or the court.

**QUESTION:**

**Can a county official destroy original documents if the documents have been imaged? [AG Opinion No. 96-126]**

**ANSWER:**

This is a question that is becoming more common with the implementation of automated equipment and document imaging. Many county offices are proud of the fact that they are becoming “paperless”. So this question arises about older paper documents and even the current paper documents that have been imaged in some fashion.

Arkansas Code Title 13, Chapter 4, Subchapter 2 deals specifically with electronic court records and Subchapter 3

deals with county records retention and the destruction of those records in general. A.C.A. 13-4-301(b) dealing with county records says, “If a record is photographically or electronically transferred to other media of a permanent nature, the original documents may be destroyed, *except that no handwritten records over fifty (50) years old shall be destroyed.*”

An original document can be destroyed in accordance with proper destruction denoted in A.C.A. 13-4-301(d) if the original has been “photographically or electronically transferred to other media of a permanent nature”. This brings up another question. What is a “permanent nature”? Plain language law would indicate that it means that the original paper document has been transferred to other media that will endure for the period of time that type of document is required to be retained by the county.

According to county record retention laws we understand that some records are permanent – meaning that they should always be retained. Other records have to be retained for various periods of time. When a county official is making the decision to destroy original documents in order to save space or be more efficient – serious consideration must be given to the medium being used to transfer the image and to what degree that transferred image is of a “permanent nature”.

It is now a requirement of the general county records retention law in A.C.A. 13-4-301 when a county official converts to electronic records and destroys original records certain requirements must be met in order to safely maintain the records in a usable format - making sure the equipment does not become obsolete causing the inability to retrieve or search records. Those requirements include the following:

1. The information converted to electronic record shall be in a usable and accessible format capable of accurately reproducing the original over the period of time that type of record is required to be kept by the county.
2. Operational procedures must ensure that the authenticity, confidentiality, accuracy, reliability, and appropriate level of security are provided to safeguard the integrity of the information.
3. Procedures must be put in place for the backup, recovery, and storage of records to protect the records against media destruction or deterioration and information loss.
4. A retention conversion-review schedule must be established to make sure that electronically or optically stored information is reviewed for data conversion at least one (1) time every four (4) years or more frequently if necessary to prevent the physical loss of data or technological obsolescence of the medium.

## **Chapter Five - DESCRIPTION OF RECORD FILES-(BOOKS)**

This section was included to assist newly elected County Treasurers by describing the commonly kept record files in the office of Treasurer. The following is a description of the records that are kept in some Treasurers' offices around the state. These records are not necessarily required by law to be kept in this format, but are kept in this manner as a practice of good office management.

### **RECORDS KEPT BY TREASURER**

**SCHOOL DISTRICT TREASURER'S CERTIFICATE** - (ACA 6-13-701) - The Treasurer maintains a file containing a duly executed certificate of appointment of the School District Treasurer.

**LOCAL SCHOOL DISTRICT TAXES** - All local taxes of the school district shall be remitted by the county treasurer to the county collector. The county treasurer shall remit the funds in a timely manner to the school district treasurer in those school districts maintaining a school district treasurer.

**TIMBER TAX** - (ACA 26-61-110) - The county treasurer shall, on or before the twentieth day following the end of each calendar quarter, transmit to the Arkansas Forestry Commission all taxes collected under the provisions of this chapter during the proceeding calendar quarter.

### **ACCOUNTS LEDGER**

The Treasurer maintains an accounts ledger that lists every account or fund required to be on the books of the county. The accounts ledger shows all the activity on each account that includes all deposits, expenditures, source of the deposit, source of the expenditure, the date made, and the number of the check.

### **BANK LEDGER**

The Treasurer maintains a bank ledger which contains the balances of the county at each bank. The bank ledger shows all the activity, the deposit and withdrawals associated with each bank. The following information is kept:

- date of transaction
- check number
- source of the deposit or expenditure
- receipt number
- deposits
- checks
- balance

### **BOND BOOK**

The Treasurer keeps a book that contains information on all long-term debt to which the county or school district is obligated. The type of information contained is as follows:

- type of the bond
- paying agent
- amount of the issue
- interest rate
- purpose of the bond issue
- schedule of payments

### **RECEIPT BOOK**

The Treasurer is required to receipt all moneys that come into the possession of the county. Receipts are to be pre-numbered and made in duplicate with:

- 1 copy to the remitter
- 1 copy to remain in the receipt book

Also the receipt book needs to have a printer's certificate which shows the number of receipts in the book and numerical series of receipts. (ACA 14-25-108)

### **RECONCILIATION FORM**

This is a form designed to assist the Treasurer in the required monthly reconciliation of accounts - reconciling the bank balance to the book balance. The law provides a form to use. However, there is more than one way to arrive at a reconciled balance. More than likely your software has a reconciliation form. The important issue to remember is that the law requires at the minimum a monthly reconciliation of bank balances to the book balance. In this age of computerization and online banking it is easy to reconcile on a daily basis. (ACA 14-25-107)

### **COUNTY GOVERNMENT FINANCE**

County government is supported financially from three basic sources: federal government, state government, and local government.

The Federal revenues include payments-in-lieu of taxes on federally owned land in the county, and various federal grant-in-aid programs. County government experienced an anomaly in federal funding during the years of 2020 and 2021 because of the CoVid-19 pandemic. Federal legislation through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) in 2020 and the American Rescue Plan Act (ARPA) of 2021 infused millions of dollars into county coffers. However, this was a once-in-a-generation or once-in-a-life-time funding that county government will not see again.

The state revenues include severance taxes, general turnback, road turnback, county property tax relief funds (a sales tax) and various state grant-in-aid programs.

The local revenues include the general property tax millage, road tax millage, fines and costs, fees and commissions. The local option sales tax is also considered a local revenue.

The reliance on these sources of funding from the three levels of government has shifted significantly over the past few decades. As an example, in 1971, 54% of the county revenue was collected at the local level; 43% at the state level; and only 3% at the federal level. By the mid-1970s and into the early eighties the county revenue source percentages had shifted to an almost equal amount from each level of government – 1/3 from the federal level; 1/3 from the state level; and 1/3 from the local level. However, with the demise of federal revenue sharing in the early 1980s and the decrease in the percentage of state dollars allocated to local government, the county budget process has taken on a different look today. When federal revenue sharing was ended by Congress the Arkansas legislature enacted legislation allowing local governments to pass sales taxes. The local sales tax has become the largest single source of revenue for many counties.

The local property tax system in this state is based on the assessment of real and personal property one year and the collection of taxes on that assessment the following year. The collection period is from the first business day in March until October 15th of each year. The property tax collection period is from the first business day in March until October 15<sup>th</sup> of each year. However, the collector may open the tax books for payment of ad valorem taxes before the first business day in March if the tax books have been delivered and the real and personal property taxes have been certified for collection. This 7 month tax collection period causes most taxpayers to wait until the October 15<sup>th</sup> deadline to pay their taxes.

## INVESTMENTS

The County Treasurer along with the County Judge and the County Collector make up the County Depository Board. It is up to this Depository Board to supervise the depositing and investing of all county funds held by the County Treasurer. (ACA 19-1-504 and 19-8-106)

County Treasurers are required to make timely investments of public funds in order to earn optimum interest consistent with the prudent investor rule for investments as defined by Arkansas law. (ACA 19-8-107) In accordance with ACA 19-3-605 the prudent investor rule means that, in making investments, the fiduciaries shall exercise the judgment and care under the prevailing circumstances that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it, not for speculation but for investment, considering the permanent disposition of funds, and the probably safety of capital as well as probable income.

County Treasurers shall require collateralization for the “deposit” of public funds for amounts not fully insured

directly by the United States. The deposit of public funds is defined as a demand deposit [checking account], a savings deposit, or a time deposit [certificate of deposit] (ACA 19-8-107)

Arkansas Code § 19-1-501 and 19-1-504 also allows counties to invest public funds in a direct or guaranteed obligation of the United States; a direct obligation of an agency, instrumentality, or government-sponsored enterprise; and a bond or other debt of the state, a school district, a county government, a municipal government, or an authority of a governmental entity as long as it has a debt rating of “A” or better at the time of purchase.

When a county government purchases any of the legal securities delineated in ACA 19-1-501 the county actually purchases and owns the investment and your security is either the full faith and credit of the United States Government or the implied backing of the U.S. government – depending on the investment security purchased. This type of public funds investment is not a deposit of any financial institution.

For more complete details concerning proper and legal investments, procedures and agreements for perfecting security of public funds for county government read in their entirety Arkansas Codes § 19-1-501, 19-1-504, 19-8-104 and 19-8-107.

A bank may secure the deposit of public funds by the pledge or escrow of several types of securities, a surety bond, private deposit insurance or an irrevocable letter of credit issued by a Federal Home Loan Bank, subject to the depositor’s discretion regarding the suitability of the collateral. (ACA 19-8-108, 19-8-109, 19-8-110, 19-8-203, 23-47-203).

In addition to consummating a depository agreement with each financial institution designated as a depository for public funds of a county the county treasurer must also consummate all other supplemental agreements necessary to perfect security of any deposited public funds not fully insured directly by the United States. Currently the FDIC requires a Security Agreement for Public Funds in Deposit, a Certificate of Corporate Resolutions, and a Custodial Services Agreement to perfect security. A copy of these agreement forms may be found in the back of this manual.

In the matter of interest distribution, counties in Arkansas usually follow the general accounting principal that “interest follows principal”. However, a few county quorum courts have passed ordinances that override that generally accepted rule and distribute county interest in other fashions. The Division of Legislative Audit recommends that interest follow principal. Specifically, after January 1, 1992, all interest earned on county road fund moneys must be credited to the county road fund. (ACA 26-79-106)

## WORK PROCESS DESCRIPTIONS

This section of the manual is designed to assist County Treasurers newly elected and experienced, with daily office operations. The processes enumerated were selected because they comprise the major functions of the County Treasurer's office.

In reading the work processes described on the following pages, it should be remembered that these are only examples of ways to perform the functions and not the only way to perform them.

### **Monthly Account Reconciliation**

STEP 1) Total the warrants for the month and total accounts ledger for the month.

STEP 2) Take last month's balance from the bank book and add what was received (deposits) for the current month and

subtract all the disbursements for the month. This should give you the balance for the current month.

STEP 3) Record the balances from the account book onto the reconciliation form and total all accounts on the reconciliation form.

STEP 4) Add the bank book for the month and reconcile the bank statements to make certain that the bank statements balance with the bank book.

STEP 5) List the outstanding checks which have been written, but do not show up in the bank statement. It is also recommended that this list of outstanding checks be kept for the Legislative Audit Division.

This monthly reconciliation is set up to reconcile two things:

- 1) Reconcile the bank statements to the Bank Book.
- 2) Reconcile the accounts ledger to the bank balance.

### **BEST PRACTICES for Receiving, Disbursing and Reporting Prisoner Telephone Commissions & Profits Earned from Prisoner Commissary Services**

STEP 1) Sheriff's Office/Jail or vendor sends check to the Treasurer for the amount of commissions from prisoner telephone services (revenue code 7804) and profits from prisoner commissary services (revenue code 7805). Commissary service profits are derived from the sale of any products/services to inmates. ACA 12-41-105(a)(1)

STEP 2) Treasurer credits these monies to the County Sheriff's Office Fund (Fund 6017), an agency fund. This fund is used to account for monies held by the Treasurer as an agent for the Sheriff until transferred. The transfer of monies is not subject to appropriation by the Quorum Court. ACA 12-41-105 (a)(2)(A)(B)

STEP 3) The transfer of 100% of these monies is made to the Communications Facility and Equipment Fund monthly. If the Sheriff has this fund on his/her books, as established

by law, issue a Treasurer's check from the County Sheriff's Office Fund to the Sheriff. If the Treasurer has this fund on the books of the county, as requested by the Sheriff, use a county court order to transfer these monies from the County Sheriff's Office Fund to the Communications Facility and Equipment Fund (Fund 3014). ACA 12-41-105(b)(1)

STEP 4) The County Sheriff **must** annually allocate a percentage (up to 75%) of the commissions and profits credited to the Communications Facility and Equipment Fund for the maintenance and operation of the county jail. ACA 12-41-105(b)(2)

STEP 5) The Sheriff shall provide a reconciled accounting of the Sheriff's Communication Facility and Equipment Fund, including the receipts, disbursements and balance, to the County Treasurer by the tenth day of each calendar month. This same type reporting is required for any other operational fund that is held by the Sheriff and not on the books of the County Treasurer. ACA 14-25-112(f)

### **Deposit Procedure**

STEP 1) Treasurer makes out the deposit slip and lists on it:

- the receipt number in numerical order
- who receipted to
- amount of receipt
- note amount of any cash that is deposited

STEP 2) Treasurer should write the name of the bank deposited in on various receipts to aid in rectifying a mistake if one is made.

### **Monthly Quorum Court Report**

STEP 1) Take the previous months end-of-month balance from the account ledger.

STEP 2) Record all accounts ledger transactions including all amounts received and disbursements made for each account.

STEP 3) Compute current month balances for each account having recorded previous months balances and all transaction activity.

STEP 4) Compute year-to-date balances including receipts and expenditures by account.

STEP 5) Provide quorum court with recap of revenues by classification for all operating accounts showing current month, year-to-date actual, year-to-date projection and total year projection for each source of revenue.

STEP 6) Attach a letter stating that the attached report is true and correct to the best of your knowledge.

### **Monthly Tax Settlement**

STEP 1) Collector provides Treasurer with the total amount of current taxes collected for the month.

STEP 2) Treasurer posts total amount collected for the month into the Collector's unapportioned account.

STEP 3) County Clerk or the Collector computes the 90% amount of taxes that go into each account and provides that information to the Treasurer. Ten percent (10%) is held in reserve in the collector's unapportioned account for the final tax settlement.

STEP 4) Treasurer then transfers money to various accounts based on the County Clerk's or other officials' certified computations and posts information in the accounts ledger.

STEP 5) Treasurer remits to the various cities in the county and to each school district with a district treasurer, their amount of tax for the month.

### **Final Tax Settlement**

STEP 1) The county clerk or other official appointed by the quorum court computes the final tax settlement of the county collector using the 10% reserve in the collector's unapportioned account held by the county treasurer. The proper official sets forth the amount due to or from the various taxing entities. The final tax settlement is filed with the county court (Judge) on or before the fourth Monday of December each year.

STEP 2) The county court (Judge) approves, rejects or restates the final tax settlement on or before December 31 of each year.

STEP 3) The treasurer then transfers money to various accounts based on the computations in the final settlement and posts information in the accounts ledger. The account is zeroed out each year and all of the money is transferred to other accounts.

STEP 4) Treasurer remits to the various cities in the county, to each school district treasurer, to each improvement district and to any other entity for which the county acts solely as a collecting agent, their amount of the tax.

### **Delinquent Personal Tax Settlement**

STEP 1) Collector provides Treasurer with the total amount of delinquent personal taxes collected for the month.

STEP 2) Treasurer posts total amount collected for the month into the Delinquent Personal Account.

STEP 3) County Clerk or the Collector computes the amount of taxes that go into each account and provides that information to the Treasurer. No 10% reserve fund is established for delinquent personal taxes.

STEP 4) Treasurer then transfers money to various accounts based on the computations and posts information in the account ledger.

STEP 5) Treasurer remits to the various cities in the county and to each school district with a district treasurer, their amount of tax for the month.

Note: All costs associated with delinquent personal property taxes are prorated to the original taxing entities. One hundred percent (100%) of the penalties associated with delinquent personal property taxes are county revenues credited to the County General Fund. (ACA 26-36-201)

### **Delinquent Real Estate**

Transfer of tax delinquent lands.

ACA 26-37-101 provides: (a) (1) All lands upon which the taxes have not been paid for one (1) year following the date the taxes were due, October 15, shall be forfeited to the state and transmitted by certification to the Commissioner of State Lands for collection or sale

(B) The Commissioner of State Lands may accept an electronic certification of tax-delinquent parcels from a county.

(2) Tax delinquent lands shall not be sold at the county level.

(b) The county collector shall hold all tax-delinquent lands in the county for one (1) year after the date of delinquency, and, if the lands are not redeemed by the certification date, which shall be no later than July 1 of the following year, the county collector shall transmit it to the state by certification, after notice as provided in this chapter, indicating all taxes, penalties, interest, and costs due and the name and last known address of the owner of record of the tax-delinquent lands.

(c) Upon receipt of the certification, title to the tax delinquent lands shall vest in the State of Arkansas in care of the Commissioner of State Lands.

### **Distribution of funds.**

ACA 26-37-205 provides (a) All moneys collected by the Commissioner of State Lands from the sale or redemption of tax delinquent lands shall be distributed as follows:

(1)(A) First, to the Commissioner of State Lands, the penalties, the collection fees, the sale costs, and the other costs as prescribed by law.

(B) The sale costs include without limitation, fees for title work;

(2) Second, to each county an amount equal to the taxes due plus interest and costs to the county as certified by the county collector, which amount shall be held in an escrow fund administered by and remitted to the counties within one (1) calendar year of the receipt of the moneys by the Commissioner of State Lands;

(3)(A) Third, to each county an amount equal to the delinquent personal property taxes, plus penalty, of the owner or owners of the delinquent land as certified by the county collector, which amount shall be held in an escrow

fund administered by and remitted to the counties after one (1) calendar year of the receipt of the moneys by the Commissioner of State Lands.

(B) The Commissioner of State Lands shall review the information provided by the county collector and any other interested party to ascertain:

(i) Whether the personal property tax and penalty qualifies to be withheld from the tax-delinquent land proceeds; and

(ii) The amount of personal property tax and penalty that qualifies under this subdivision (a)(3) to be withheld.

(C) If the Commissioner of State Lands is required to make a refund of the personal property taxes withheld under subdivision (a)(3)(A) of this section to a purchaser of tax-delinquent lands for any reason, the amount of the refund shall be recovered by the Commissioner of State Lands from the county or counties that originally received the proceeds under this subdivision (a)(3) of the tax delinquent land sale.

(D) The Commissioner of State Lands shall promulgate rules and forms needed to administer this subdivision (a)(3).

(E) This section does not require the Commissioner of State Lands to search county records to determine whether an owner of tax delinquent land owes delinquent personal property taxes.

(F) This section does not grant a county a right to a lien against real property for the payment of delinquent personal property tax;

(4)(A) Fourth, to the Department of Finance and Administration an amount equal to the delinquent tax, penalty, and interest owed to the department and for which certificates of indebtedness have been filed against the owner or owners of the tax-delinquent land as certified by the department, which amount shall be held in an escrow fund administered by and remitted to the department within one (1) calendar year after the receipt of the moneys by the Commissioner of State Lands.

(B) If the Commissioner of State Lands is required to make a refund of the taxes withheld under subdivision (a)(4)(A) of this section to a purchaser of tax-delinquent lands for any reason, the amount of the refund shall be recovered by the Commissioner of State Lands from the department from the proceeds originally received under this subdivision (a)(4).

(C) The Commissioner of State Lands shall promulgate rules and forms needed to administer this subdivision (a)(4);

(5)(A) Fifth, to each county an amount equal to the delinquent solid waste assessments, plus penalty and interest, of the owner or owners of the tax-delinquent land as certified by the county collector, which amount shall be held in an escrow fund administered by and remitted to the county after one (1) calendar year of the receipt of the moneys by the Commissioner of State Lands.

(B) The Commissioner of State Lands shall review the information provided by the county collector and any other interested party to ascertain:

(i) Whether the amount of delinquent solid waste assessment and penalty and interest qualifies to be withheld from the tax-delinquent land sale proceeds; and

(ii) The amount of delinquent solid waste assessment and penalty and interest that qualifies under this subdivision (a)(5) to be withheld.

(C) If the Commissioner of State Lands is required to make a refund of the delinquent solid waste assessment withheld under subdivision (a)(5)(A) of this section to a purchaser of tax-delinquent lands for any reason, the amount of the refund shall be recovered by the Commissioner of State Lands from the county or counties that originally received the proceeds under this subdivision (a)(5) of the tax-delinquent land sale.

(D) The Commissioner of State Lands shall promulgate rules and forms needed to administer this subdivision (a)(5).

(E) This section does not require the Commissioner of State Lands to search county records to determine whether an owner of tax-delinquent land owes delinquent solid waste assessments.

(F) This section does not grant a county a right to a lien against real property for the payment of delinquent solid waste assessment; and

(6) Sixth, to be placed in another escrow fund administered by the Commissioner of State Lands, the remainder, if any.

(b) If no actions are brought within the time limits prescribed under this subchapter, the remaining funds, if any, shall be distributed by the Commissioner of State Lands as follows:

(1)(A) Ten percent (10%) of the remaining funds up to a maximum amount of five hundred dollars (\$500) shall be paid to the Commissioner of State Lands for the administration of the distribution of the funds.

(B) However, the amount paid to the Commissioner of State Lands under this subdivision (b)(1) shall not be a sum less than the amount necessary to pay filing fees required to record any deeds;

(2)(A) After payment is made to the Commissioner of State Lands pursuant to subdivision (b)(1) of this section, the amount left in the remaining funds shall be paid to the former owners of the tax-delinquent land.

(B)(i) "Former owner" means a person, partnership, corporation, or other legal entity capable of owning real property in the State of Arkansas and that holds record title to the real property on the date of sale by the Commissioner of State Lands.

(ii) "Former owner" does not include heirs or relations beyond the first degree of consanguinity.

(C)(i) A former owner must file an application with the Commissioner of State Lands requesting the release of the funds.

(ii) The application shall be provided by the Commissioner of State Lands and shall require proof of ownership of the tax-delinquent land as well as proof of authority to act on behalf of the owner.

(iii) The application may require other information the Commissioner of State Lands deems necessary before the release of the funds.

(D)(i) The former owner shall release and relinquish all rights, title, and interests in and to the tax-delinquent land.

(ii) The Commissioner of State Lands shall provide a release deed to the former owner to execute.

(E) In the event of any dispute, claim, multiple claims of ownership, controversy regarding the release of the funds,

or claim not expressly permitted under this section, the Commissioner of State Lands may require the party or parties to provide a court order to resolve the issues and to establish the party or parties entitled to the remaining funds.

(F) An agreement by a former owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of remaining funds, is enforceable only if the agreement:

- (i) Is in writing;
- (ii) Clearly sets forth the nature of the property and the services to be rendered;
- (iii) Provides a fee of not more than ten percent (10%) of the recovery;
- (iv) Is signed by the former owner; and
- (v) States the value of the remaining funds before and after the fee or other compensation has been deducted.

(G)(i) An agreement covered by subdivision (b)(2)(F) of this section that provides for compensation that is unconscionable is unenforceable except by the former owner.

(ii) A former owner who has agreed to pay compensation that is unconscionable may maintain an action to reduce the compensation to a conscionable amount.

(iii) The court may award reasonable attorney's fees to a former owner that prevails in the action.

(H) Subdivision (b)(2)(G) of this section does not preclude a former owner from asserting that an agreement covered by subdivision (b)(2)(F) of this section is invalid on grounds other than unconscionable compensation.

(I)(i) The Commissioner of State Lands shall make all funds payable to the former owner.

(ii) No funds shall be made payable to any other person or entity other than the former owner without a court order directing the payment to the other person or entity.

(iii) No interest shall be paid to the former owner on the funds.

(J)(i) Anyone filing a claim or assisting with the filing of a claim that results in the erroneous payment of a claim is responsible for the repayment of all funds paid.

(ii) Any claim filed fraudulently is punishable as a Class D felony; and

(3)(A) Any funds placed in escrow prior to July 1, 2005, shall be held in escrow for five (5) years and at the end of the five-year period, if the funds have not been distributed, the escrow funds shall escheat by operation of law to the county in which the property is located.

(B) Any funds placed in escrow on and after July 1, 2005, but before July 1, 2018, shall be held for three (3) years, and at the end of the three-year period, if the funds have not been distributed, the escrow funds shall escheat by operation of law to the county in which the property is located.

(C) Any funds placed in escrow on and after July 1, 2018, shall be held for two (2) years, and at the end of the two-year period, if the funds have not been distributed, the escrow funds shall escheat by operation of law to the county in which the property is located.

(c) All funds distributed to each county by the Commissioner of State Lands from the redemption or sale of tax-delinquent lands, including any interest and costs, are to be distributed to the applicable taxing units where the delinquent land is located within the county in the

manner and proportion that the taxes would have been distributed if they had been collected in the year due.

(d) All funds received by a county from the redemption of tax-delinquent land at the county level, including any penalty, interest, and costs, are to be distributed to the applicable taxing units where the delinquent land is located within the county in the manner and proportion that the taxes would have been distributed if they had been collected in the year due.

(e) This section shall be severable, and if any phrase, clause, sentence, or provision of this section is declared to be contrary to the laws of this state, the validity of the remainder of this section shall not be affected.

ACA 26-37-205 (As recently amended by Act 1053 of 2017)

### **Redemption of lands not transferred**

ACA 26-37-109 provides: (a)(1) A county collector may charge a fee of two dollars and fifty cents (\$2.50) for the issuance of each certificate of land redemption for each parcel of tax delinquent land redeemed in the county collectors office.

(2) The fee under this subsection shall be deposited into the County General Fund.

(b) The county collector shall accept payment for the redemption of tax-delinquent land that has not been transferred to the Commissioner of State Lands.

(c) The county collector shall pay over to the county treasurer on the first of each month or within ten (10) days thereafter all amounts collected under this section. However, upon a certificate of distribution of the amounts collected under this section being prepared by the county clerk or county collector, which certificate of distribution shall be issued on or before the thirtieth day of each month, the county treasurer will transfer to the various funds the amount due each fund, such as the county, school, or municipality fund, from the amounts collected under this section.

### **Notes on Distribution of Penalties, Interest, and Costs on Delinquent Real:**

The general rule of thumb is for penalties, interest and costs assessed and collected on delinquent real to be prorated to the various taxing units [ACA 26-37-205(c)(d)]. There are a couple of exceptions – and they are not really penalties, interest, or costs. One of them is “unclaimed excess proceeds” received from the State Land Commissioner. They are not subject to proration and are county funds in accordance with a 1997 AG Opinion [97-239] and are general funds of the county. The other exception to the rule is the Collector’s Land Redemption Fee - \$2.50 for each parcel of tax-delinquent land redeemed at the county level. This fee is deposited in the County General Fund in accordance with ACA 26-37-109(a)(2).

### **Financial Management System**

This system was mandated by Act 122 of 1981, codified at ACA 14-21-101 and will be a very important part of the



work of the County Treasurer. The Financial Management System was developed by the Legislative Audit Staff and was implemented by the various counties in the state January 1, 1983. A revised County Financial Management System Manual was developed by the Division of Legislative Audit that was required to be implemented by the counties of Arkansas by January 1, 2014. The July 2015 edition of the manual is the latest version.

The Division of Legislative Audit has published a booklet entitled County Financial Management System Manual. The Association of Arkansas Counties recommends that each Treasurer obtain a copy of this manual. A copy can be obtained from

Division of Legislative Audit

172 State Capitol  
Little Rock, AR 72201-1099  
Telephone: 683-8600

This manual is also available for download at [www.legaudit.state.ar.us](http://www.legaudit.state.ar.us) under the "Resources" link.

**Also available under the Legislative Audit website "Resource" link is an Information Systems Best Practices Guide.**

## **Chapter Six – COUNTY LINES ARTICLES AND FAQs**

### **County Lines Articles:**

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#### ***Budgets Reveal Much About the County***

***By: Eddie A. Jones, Consultant  
Association of Arkansas Counties***

Mother had decided to trim the household budget wherever possible, so instead of having a dress dry-cleaned she carefully washed it by hand. Proud of her savings, she boasted to my father. “Just think, Alden, we are seven dollars richer because I washed this dress by hand.” “Good,” my dad quickly replied. “Wash it again.”

That’s funny but not very deep when it comes to household budgeting. Some county budgeting is not very deep either — but it should be. A county budget reflects the county’s vision, strategy, and priorities — or the lack thereof.

The process used to develop and communicate the budget reflects how county leaders operate. Good and effective budget processes are inclusive, transparent, and efficient. A good budget process builds trust through involvement and buy-in from elected officials, department heads, and yes — even county citizens.

It is all too common for the county budget to be developed “in secret” and then presented at a public quorum court meeting for passage. Without it actually being said, what is heard is, “Here’s the budget we’ve put together behind closed doors without your input. Trust us. It’s a good budget.”

Is it? Does it actually reflect the vision, strategy and priorities of the county? I’m afraid, all too often, the county does not really have a vision, strategy or priorities. Some counties operate haphazardly just letting “things” happen rather than operating with a plan. The plan starts with a good budget and when done right, key budget processes and information are communicated frequently and communicated with simplicity and clarity. That is the process that builds trust.

I have said often, and continue to say, the budget is the most important document enacted by the quorum court each year. It is the financial map for the county, and it provides the elected officials, department heads, and your citizens with great information because it talks about the priorities of the county, the money coming in, the money going out, the county operation and the services being rendered.

Budgets matter. They reveal the county’s policies and priorities. The budget is where the rubber meets the road; it shows how a county will spend and invest. A budget reflects what matters most to a county. Changes in a budget from year to year show the direction in which a county wants to head —or it should. Is your county heading in the right direction?

I understand that sometimes the budget is not fully what we envision for our county, sometimes because of obstacles not of our making. Every budget cycle presents challenges including:

- Diminished or stagnant local government revenues. In Arkansas, counties find themselves having to use more and more of their revenue to support state functions, such as the court system. That leaves less money for local government services and functions. State mandates are a heavy burden that need to be remedied.
- Some counties don’t avail themselves of revenues available. Several counties have not maxed their property tax millage to the detriment of county government operations.
- Lack of clear direction from the quorum court, finance committee and the finance officers of the county (judge, treasurer, clerk or comptroller) — meaning a lack of alignment around a central vision or strategy.
- Lack of budget ownership. Every county official and department head should make the case for the budget they need. But once the budget is established, every official and department head should earnestly strive to stay within their budget.

- Low levels of citizen understanding, input, involvement, and engagement. If you really want to build trust in county government involve your constituency.

When you have budget challenges you must develop “Best Practices” to help overcome those challenges. You must find ways to improve budgeting efficiency, effectiveness, buy-in, budget ownership and public involvement.

Here are a few Budget Best Practices:

- Have a clear, well-defined budget process. Establish a timeline with all the key steps. Know what has to happen at each step, when the step must occur, how long the step must take, and who should be involved.
- Start with a vision, goals, and a strategic plan. The budget supports what a county wants to accomplish. The first step in a good budget process is articulation of a clear vision by elected officials. How does that happen? It begins with a strategic planning and goal-setting session of the quorum court and elected officials where visions are shared and short-term and long-term goals are set.
- Focus. Choose a challenge or two to focus on for the budget year. You can’t do everything at once. Pick a challenge, come up with a strategy, and then execute.
- Get buy-in from all officials and departments. Budget time should not be a free-for-all. It should be a Three Musketeers time. Nineteenth century French author Alexandre Dumas developed a great motto for the title characters in his book *The Three Musketeers*, “All for one and one for all.” All the members of a group support each of the individual members, and the individual members pledge to support the group. It is important for all county officials and departments to understand the vision and goals of the budget, and how they fit into the budget process. Engage all departments in creating and implementing the budget.
- Invite citizen input. Budgets are more credible and receive more widespread support when citizens understand and know that they have a voice in them. It is the citizenry that we are working for.
- Communicate the budget broadly, simply, and clearly. Once the budget has been developed, the key is to communicate it to all key stakeholders, including elected officials, departments, staff, and citizens. Successful county government leaders communicate.

An effective budget process builds trust in local government. For county leaders to successfully implement their plans they must have the support, buy-in, and most importantly, trust of all key constituents. Dr. Michael Stewart, a management consultant, said “A leader can only implement what people can understand.” So successful implementation requires understanding and trust.

Because good budgets, by nature, are complex and detailed, achieving understanding and trust requires moving from overwhelming amounts of data to simple, clear information. In other words, you may have to put the budget in summary form — but not hiding information. Keys to successfully communicating priorities and building trust include:

- Be as transparent as possible. Trust is built through transparency. Share as much as you can, as often as you can. If you’re caught hiding something trust is thrown out the window.
- Make it simple. Don’t assume that all officials, county employees, and residents of your county have the same level of expertise as those developing the budget. As I mentioned earlier, you may need to summarize the budget, but clearly delineate the contents of the budget.
- Allow feedback and interaction. In addition to making budget information transparent, easily accessible and simple, build trust by fostering dialogue with citizens.

What does your county budget reveal about your county operation? Many county budgets in Arkansas reveal too little planning for the future; failure to establish clear priorities (employees should always be a priority); and the lack of reserves for emergencies and infrastructure needs, including courthouse maintenance and preservation.

One of the worst budget habits that counties have developed is the reliance on one-time money for on-going expenses, and that includes carryover balances. Using one-time money to fund budget items that result in recurring costs is a slippery slope that will lead to a structurally unbalanced budget. The carryover balances, or at least a portion, should be used to establish reserve funds that could then be relied on for emergencies, etc. That is actually the intent of law.

Arkansas Code § 14-21-106 actually ascribes the term “surplus” to any moneys left remaining unexpended and unappropriated in any county fund from any previous year. In accordance with law the county court, which is the county judge, may enter a court order to add the surplus to the respective funds of which the surplus remains unexpended and use it as revenue for the current fiscal year. So it is the county judge, not the quorum court that gets to decide whether to use the surplus/carryover cash from any fund in making the current year budget. More county judges should exercise the authority

this law provides to hold back all or part of the carryover fund balances to put the county in a better financial operating position, especially as it relates to cash flow and preparation for emergencies. This is especially important for the major funds of the county, including County General and Road & Bridge.

The few Arkansas counties that employ this budget practice, using the “surplus” or “reserve” as the law intended, have much better cash flow. And they have a reserve to make additional appropriations during the course of the year as unexpected needs arise for capital, infrastructure, and other emergency type expenditures.

Wilbur Mills, former Arkansas Congressman from 1939 until his retirement in 1977, was chairman of the House Ways and Means Committee for many years and was many times referred to as “the most powerful man in Washington.” One of this committee’s main functions was appropriations — budget. Congressman Mills once said, “What I wanted to do was see if we couldn’t balance the budget.” They couldn’t.

Counties of Arkansas don’t have a choice. You must have a balanced budget, or should. I’m afraid some county budgets are only balanced on paper but not in reality.

As you develop your 2020 county budget, remember the law clearly defines those things that a county must fund and those things a county may fund but are not required to [A.C.A. 14- 14-802]. A county must prioritize. Dave Ramsey, America’s voice on money said, “Doing a budget means learning an ancient and powerful word: No.” Prioritize, first funding those offices and functions that counties are required to properly fund. Keeping our counties running efficiently, effectively and financially sound is a painful process requiring shared sacrifice and pain. Making tough choices is what county and district officials do to keep counties solvent and moving forward.

What picture does your county budget paint? It should reflect the values and priorities of your county and its people. A budget is more than just a bunch of numbers in a document; it is a blueprint and priorities; it embodies our values. Make it your first order of business this fall to develop a good budget telling your money where to go instead of wondering where it went.

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## ***Do County Officials Have a Responsibility to Stay Within Budget?***

***By: Eddie A. Jones, Consultant  
Association of Arkansas Counties***

The short answer to the question is “yes”. A county official is responsible for staying within his or her budget – the appropriation provided by the quorum court. There is also a responsibility to live within the cash available at any given time. A budget is based on projected revenues expected to come in over a 12 month period. The budget is not based on “cash in the bank” on day one of the year.

Some county officials “go over their budgets” very carefully – week after week, month after month making sure they remain in compliance with the constraints of the appropriated funds for their office operations. Other county officials just “go over their budgets”. That should not be.

Budgets are real and should be realistic. Jacob Lew, a former U.S. Secretary of the Treasury, said in reference to the Federal budget, “The budget is not just a collection of numbers, but an expression of our values and aspirations.” The county budget should be the same – not just a collection of numbers, but an expression of priorities as established by the Quorum Court. Yes, they get to set the priorities. Some years you may like it – other times – maybe not. But it’s your job as an elected official to work within the financial perimeters set by the court.

As the legislative branch of county government the Quorum Court is given the authority by the state constitution [Amendment 55] and state law to adopt ordinances necessary for the government of the county including the adoption of a county budget through an appropriation ordinance as prescribed in Title 14, Chapter 14, Subchapter 9 of Arkansas Code Annotated.

Senator Everett Dirksen, a Republican U.S. Senator from Illinois in the 1950’s and 60’s was attributed with saying, “A billion here, a billion there – sooner or later it adds up to real money.” In Arkansas county government we would say “a thousand here, a thousand there – before long it adds up to real money.

County Quorum Courts should be, in fact must be, in tune with the county’s needs and then be thoughtful and professional in allocating precious financial resources in the form of appropriations so that the fiscal affairs of the county are conducted on a sound financial basis in accordance with Arkansas Constitution, Article 12, § 4. It is also the court’s responsibility to properly establish priorities as set forth in § 14-14-802. Each county official and department head must then be diligent in how they expend the appropriated funds for their office to get the best bang for the buck and serve their constituency to the best of their ability under the constraints of the budget given them – the legal limit of their spending.

Does the Quorum Court get to tell a county official how and for what to expend their appropriation? The simple answer to that question is “no”. While the Quorum Court should always be concerned with ensuring fiscal responsibility – there is this thing called “separation of powers doctrine”.

County government is somewhat like state government. County government is comprised of separate branches in order to provide a system of checks and balances. Under the classic division of powers, the legislature [quorum court] makes the laws and appropriates public revenues, the executive branch [county officials] administers the laws and expends the appropriations, and the judiciary interprets the laws.

No one questions the power of the Quorum Court, the legislative branch of county government, to appropriate county funds. However, it does not follow that a legislative body retains the right to administer a previously approved appropriation. The Arkansas Supreme Court recognized this principle of separation of powers in the case of *Chaffin v. Arkansas Game and Fish Commission (1988)*.

The Arkansas Attorney General has issued several opinions over the years addressing this issue. The opinions cite case law and the separation of powers doctrine. To summarize the conclusion of these opinions – the quorum court may not attach conditions to an appropriation which purport to reserve to the quorum court powers of close supervision that are executive in character. The quorum court cannot do indirectly through means of line item appropriations and conditions what it is impermissible for it to do directly. Line item appropriations become constitutionally impermissible when the authority of the executive branch [county officials] is infringed by legislative control over expenditures.

In other words, a county official does not have to come before the quorum court for approval before purchasing equipment or anything else as long as there is a validly adopted existing appropriation by the quorum court for the expenditure. Neither can an appropriation ordinance get into the specifics of requiring that an official buy a specific brand or do business with a specific vendor. Remember, the appropriation is made by the legislative branch – the quorum court; and the expending of the appropriation is administered by the executive branch – the county officials. Many counties have an article/section in their budget ordinance addressing nonrestricted expenditure categories, which basically allows for the transfer between line items in each of the major categories of expenditures – except for the Personal Services Category. Under this scenario, usually the County Judge is required to report to the Quorum Court each month the line item transfers made during the previous month.

Some counties enact their budget ordinance with an article/section that provides that any transfer of monies between the major categories of expenditures can be made only with prior approval of the Quorum Court. Either way is proper and constitutional. It is simply a matter of how much latitude a county quorum court wants to provide. An AG opinion released in 2002 did not view this type restriction as an encroachment on the executive branch, “rather by requiring its approval of the transfers of monies, the Quorum Court has simply ensured that it retains its appropriation authority.”

Case law has rendered that an **official must live within their appropriation**. In a 1988 case, *Venhaus v. Adams*, the Supreme Court ruled that “an agency of county government which performs a function imposed by law must live within its appropriation unless that appropriation is unreasonable.” So, there is an onus on the Quorum Court to be reasonable in making appropriations for the various offices and departments of county government.

However, appropriations made by the Quorum Court are **presumed to be reasonable and the burden rests on the office or entity filing the claim in excess of an appropriation to prove unreasonableness**. So said the Arkansas Supreme Court in another case – *Union County v. Union County Election Commission*.

The penchant to overspend should be stopped on the front end. I believe we all understand that the Quorum Court is the authority when it comes to appropriating county funds. Arkansas Code § 14-14-801(b)(2) lists one of the court’s responsibilities is to “appropriate public funds for the expenses of the county in a manner prescribed by ordinance.” As it relates to the annual budget, Arkansas Code § 14-14-904(b)(1)(A)(ii) requires, “Before the end of each fiscal year, the quorum court shall make appropriations for the expenses of county government for the following year.”

At the point of appropriation, it then becomes the duty of the executive branch to administer the expense side of the budget. The County Judge, under the authority of Amendment 55 and § 14-14-1101(a)(2) must authorize and approve disbursement of appropriated county funds. More specifically, § 14-14-1102(b)(2)(B) provides in pertinent part:

- (B) Before approving any voucher for the payment of county funds, the county judge, or his designated representative, shall determine that:
- (i) There is a sufficient appropriation available for the purpose and there is a sufficient unencumbered balance of funds on hand [cash] in the appropriate county fund to pay therefor;
- (ii) The expenditure is in compliance with the purposes for which the funds are appropriated;

- (iii) All state purchasing laws and other state laws or ordinance of the quorum court are complied with in the expenditure of the moneys;
- (iv) The good or services for which expenditure is to be made have been rendered and the payment thereof has been incurred in a lawful manner and is owed by the county.....
- (C)(i) No money shall be paid out of the treasury until it shall have been appropriated by law and then only in accordance with the appropriation.

The County Judge can do a lot to stop overspending by following this section of law. And if a claim gets approved where the cash is not in the fund on which the claim has been approved the Treasurer has a duty to refuse to issue payment. Arkansas Code § 14-15-805 basically says that the Treasurer shall refuse payment of any warrant or check that would cause a deficit balance in a special revenue fund or a deficit balance of the general fund in aggregate.

What happens if a county official overspends his or her appropriation and the county receives goods and/or services as a result of the over expenditure? Does the county have a cause of action against the official to recover all or part of the over expenditure? That's a good question that is not specifically addressed in law.

But there are any number of codes that deal with misconduct with respect to an official's budget, such as:

- § 14-22-103 declares it a misdemeanor, subject to a fine and removal from office, for any county official to violate the procedures for purchasing;
- § 14-23-202 declares it a misdemeanor, subject to removal from office, for any county official to violate the rules with respect to the handling of claims presented to the county;
- § 14-23-106(b) clearly declares it a misdemeanor, subject to a fine and removal from office, for a county court, a county judge or a county clerk to willfully violate or neglect to perform his or her duties concerning the handling of claims against the county and specifically forbids paying any claimant more than he is due; and
- § 14-14-1202(d)(3) declares it a misdemeanor, subject to a fine and removal from office, for any county official to violate the ethical rules of conduct.

Also, misconduct with respect to an official's budget could very well amount to nonfeasance or malfeasance in office. The failure to perform the duties of one's office [which include the administration of a budget] could amount to nonfeasance, if based purely upon negligence.....or to malfeasance, if the failure is based upon some intentional motivation. Of course, removal from office is under the jurisdiction of the circuit court in accordance with Arkansas Constitution, Article 7, § 27.

In summary, under the classic division of powers, the legislative branch makes the laws and appropriates public funds and the executive branch administers the laws and expends the appropriations. But it is the job of the Quorum Court to be the watchdog of public funds. The quorum court has the authority and duty to appropriate county funds, and the statutory authority to "adopt, amend, or repeal an appropriation ordinance" [§ 14-14-907(b)].

Remember the Old Testament story of Job? Job said, "The Lord giveth, and the Lord taketh away." Arkansas law is written in such a manner that the Quorum Court can give and take away. Sometimes it is necessary – either because of a shortfall in revenues or because a county official does not control their spending. A county official only has the legal authority to spend the amount appropriated by the court for his or her operation – no more!

The Quorum Court has a responsibility to make a reasonable appropriation and then the county official has the responsibility to stay within that appropriation – so ruled the courts.

Dave Ramsey, America's trusted voice on money, said, "A budget is telling your money where to go instead of wondering where it went." The county budget is not a "play pretty" it is a "real tool" and should be used as such. No county official wants to hear "the light at the end of the tunnel has been turned off due to budget cuts."

***Don't Put All Your Eggs in One Basket***  
***Diversify Revenues to Properly Fund County Government and Build Reserves***  
 By: *Eddie A. Jones, Consultant*  
*Association of Arkansas Counties*

In the formative years of our country Benjamin Franklin said, "Our new Constitution is now established, everything seems to promise it will be durable; but, in this world, nothing is certain except death and taxes." There is a reason for the truth in the last part of that quote. God said, "It is appointed unto man once to die." Must be true. Secondly, we all want to live in a civilized society which must be paid for — thus "taxes."

Much more recently Jill Lepore, an American Historian and professor at Harvard University said, “Taxes well laid and well spent ensure domestic tranquility, provide for the common defense, and promote the general welfare. Taxes protect property; taxes pay for roads and schools and bridges and police and teachers. Taxes pay for hospital and nursing homes.” How true. Taxes pay for those things we desire and demand that government provide. And property taxes at the local level are “well laid and well spent.”

The year 2020 has been a year like none other. None of us has experienced a year like this due to the world-wide coronavirus pandemic. When much of the economy was shut down or restrained due to social distancing, stay-at-home recommendations and some types of business shutdowns several sources of county revenue started declining. Counties were forced to lay off or furlough employees, cancel projects, defer construction and maintenance and more: While at the same time, in many instances, increase spending in some areas for Covid-19 related expenses.

Depending on a county’s economic base, some counties have fared better than others. And those that did the very best were those that had a good diversified revenue stream and a decent level of reserves that could be used to lessen budget cuts and still maintain an adequate level of service to their constituency.

Someone once said, “Good lives are lived in the margins of hope and possibility.” Apply that to the life and operation of a county government. Without some level of financial reserves the county has little hope or possibility during an economic downturn or recession.

Recessions are events with big-time consequences for tax growth rates and revenue totals. County government in Arkansas is somewhat more insulated to damage than state government but still experiences declines in revenue.

Arkansas state government is hit hard because consumer spending and retail sales fall, decreasing the growth and collection totals of sales tax — especially since the state sales tax does not apply to groceries.

Higher unemployment and fewer work hours result in reduced income from personal earnings which, in turn, slows the growth in state income collections. During a recession many types of corporations see a decline in profits, which reduces the state’s corporate income tax collections. No county in Arkansas levies county income tax, although state law permits counties to levy a tax on the income of its individuals and businesses through a vote of the electorate. [§ 26-73-101 / § 26-73-109] To my knowledge no Arkansas county has ever exercised this option.

The state of Arkansas funds the highway and bridge program primarily with fuel taxes. That is a tax that has seen severe reduction during the pandemic as travel was somewhat restricted and people were urged to stay home. Fuel taxes cannot be levied by county government.

So where does that leave county government in times of recession? It is not that we are unscathed but we have different types of revenue and therefore are affected differently than state government.

County government has become increasingly dependent upon sales tax over the last 30 years — a tax that is very sensitive to an economic downturn. Yes, the county sales tax declines during recessionary times — even if not at the same rate as the state sales tax since our sales tax is applicable to grocery items. We better thank the good Lord for that. In some of our smaller counties the sales tax on groceries is a large percentage of their sales tax receipts.

Other sources of county revenue that are affected during a recessionary period are user fees; fees charged by county officials for certain services as set out by law; court fines, especially in a pandemic like we’ve had when court sessions were practically nonexistent; and, of course, state revenues received by counties.

Arkansas county government has a longstanding agreement with the state concerning the distribution of highway revenue taxes and this agreement is codified in law. The state gets 70 percent and the other 30 percent is divided equally to counties and municipalities. As I mentioned earlier, the sources of highway revenue are various fuel taxes and a one-half cent state sales tax. Both were heavily affected during the pandemic-produced recession, and all 75 counties took a sizeable reduction in highway turnback dollars. Wow, that hurts. Arkansas counties have around 50,000 miles of county roads while the state of Arkansas has 16,382 miles of state highway.

According to law, “a county is a political subdivision of the state for the more convenient administration of justice and the exercise of local legislative authority related to county affairs.” We receive “county aid,” or as most of us call it “general turnback” from the state to help cover the cost of state services administered at the county level. This source of revenue does not come close to covering the costs, but it helps.

However, when the state suffers revenue loss counties share in that loss many times. The legislature met in special session in March and reduced the state general budget for the final quarter of their fiscal year, which ends June 30. Counties suffered a 12.59 percent reduction in FY 2020 general turnback. Then in April the legislature convened for the even numbered year

Fiscal Session to enact the budget for the state FY 2021 — July 2020 through June 2021. We took a 15 percent reduction in general turnback in that budget.

The good news is that it could have been worse, but the state of Arkansas had reserves that helped buffer losses. That brings me to my two-pronged reason for this article: (1) the most stable source of county revenue; and (2) the urgent need for counties to build reserves, especially general reserves.

The effect of a recession on revenue collections often translates into one or more of the following policy alternatives:

- Change the tax structure to rely less upon recession-sensitive taxes;
- Raise the tax rate to increase tax collection totals;
- Cut expenditures to match available revenues.

Something counties have unwisely done on occasion is borrow funds (debt financing) to cover the difference between available revenues and expenditure commitments. By the way, that is illegal for Arkansas county government. Counties are prohibited from paying interest except for bond issues and short-term financing through Amendment 78. And the short-term financing option is available only “for the purpose of acquiring, constructing, installing or renting real property or tangible personal property having an expected useful life of more than one year.” [Arkansas Constitution, Article 16, § 1 and Amendment 78, § 2]

So what is a county to do? I suggest a combination of the policy alternatives listed above. The first thing a county must do is make the tough decision. Cut expenditures to match available revenues if you don’t have adequate reserves. If you face large cuts, more than likely the cuts will include personnel.

Next, evaluate the county’s tax structure. Many counties are relying too much on sales taxes that are recession sensitive. It’s like the old adage, “Don’t put all your eggs in one basket” — meaning if you rely too much on one resource, if it fails you have no alternative. The key word here is diversify; don’t put all your eggs in one basket.

What’s not sensitive to recession — or at least much less sensitive? Property taxes. The property tax is the most stable source of county revenue. The reason is that there are consequences to not paying property taxes. You can’t get your vehicles licensed if you have delinquent personal property taxes. If you don’t pay your real estate taxes your property will be certified to the state of Arkansas after a year, and if you don’t redeem your property at the state level after a set period of time by paying the delinquent tax, penalty and costs your real estate is sold. You can count on property taxes being paid.

By the way, Snoopy was wrong. He was barking up the wrong tree when he wrote saying, “Dear Tax Collector, I am writing to you to cancel my subscription. Please remove my name from your mailing list.” That’s not how it works.

When you own taxable personal property and/or real estate, it is assessed; goes on the tax books; a tax statement is sent; and property taxes are collected and distributed to the proper tax entities.

Property taxes in Arkansas are some of the lowest in the country. Property taxes are at the top of the list when it comes to stability in revenues. You don’t have to be greatly concerned about volatility. Except for bonded debt, county property tax rates are constitutionally set at 5 mills maximum for general operations and 3 mills for road operations. These are low rates but unlike municipal taxes or school taxes that apply to properties in a smaller jurisdiction the “county general and road millage” apply to the full assessed value in the county. So why on God’s green earth do Arkansas counties not take maximum advantage of this rock-solid revenue source?

The most common answer is that property tax is the most hated tax. For many that’s true whether or not their dislike is properly founded. Why so unpopular?

It’s not unpopular for good economic reasons. It’s unpopular for one simple reason: It’s the only tax left on the books for which people have to write a big check.

Income taxes and Social Security contributions are withheld from paychecks before the recipients get their hands on the money. Sales taxes are collected little by little as people make purchases, and the taxes are remitted by merchants and other business. It’s only with property taxes that a regular person gets a tax bill and has to pay it. However, many homeowners’ property taxes are bundled into mortgage payments and thus a bit less obviously visible. The truth of the matter is that the majority of people pay much more in income tax and sales tax than they do in property tax, but they do it a little bit at a time.

Guess what? An individual tax payer is not required to pay the full amount of current tax all at one time. They can make installment payments. The first installment of one-quarter of the amount due is payable between the first business day in March and the third Monday in April. The second payment of one-quarter is payable between the third Monday in April and the third Monday in July. And the third payment of half is payable between the third Monday in July and Oct. 15. Even better, the



county collector is authorized to take installments of current real and personal property taxes in any amount from the first business day in March through Oct. 15 with the balance due by Oct. 15. [Ref: § 26-35-501]

Only 26 counties in Arkansas, barely over one-third, have maximized the county millages by levying a 5 mill general tax and a 3 mill road tax. There are another 13 additional counties that have maximized the general millage and 8 counties that have levied the full 3 mill road tax. That calculates to 47 counties, almost two-thirds that can increase county property taxes — 21 that can raise either general or road and 26 counties that can increase both general and road.

Counties, it needs to be done. It should be done to secure a solid source of revenue that can be depended on even in the tough times like we are experiencing this year.

It is a difficult and tough decision to make. I fully understand that, but the time is now. Make plans as you look toward budget time this fall.

British Prime Minister Winston Churchill said, “There is no such thing as a good tax.” Yet, he completely understood government could not operate without them. Arthur Vanderbilt was so bold as to say, “Taxes are the lifeblood of government and no taxpayer should be permitted to escape the payment of his just share of the burden.” I cannot disagree with that. And everyone in county government knows that it takes more money to operate than you thought it did before entering the arena. When you step inside you soon find out all the obligations of county government.

I know and understand, as much as anyone, the tightrope you must walk in increasing taxes, especially property taxes. Here is a spot-on assessment of this type situation put forth by Jean Baptiste Colbert, the minister of finance for France under the rule of King Louis XIV. He said, “The art of taxation consists in so plucking the goose as to get the most feathers with the least hissing.”

In other words, you do it professionally with complete transparency. You prove the county’s financial plight; you paint the picture of what a county must fund by law and the strain that puts on your limited resources; you explain how the increased tax is needed and how it will be expended; and you provide a good example of how the tax will affect them. And if you are one of the many counties in Arkansas that does not have reserves — or very little — you need to explain the dire need to accumulate adequate reserve funds and why.

The amount of dollars needed for a county budget can vary greatly from year to year. Saving for future projects, acquisitions, and other allowable purposes is an important planning consideration for county government. Reserve funds provide a mechanism for legally saving money to finance all or part of future infrastructure, equipment, and other requirements. Reserve funds can also provide a degree of financial stability by reducing reliance on indebtedness to finance capital projects and acquisitions. In uncertain economic times, like we are in, reserve funds can also provide officials with a welcomed budgetary option that can help mitigate the need to cut services. In good times, money not needed for current purposes can often be set aside in reserves for future use.

In addition to reserve funds, maintaining a reasonable amount of undesignated fund balance within operating funds is another important financial consideration for county government. A reasonable level of unreserved, unappropriated fund balance provides a cushion for unforeseen expenditures or revenue shortfalls and helps to ensure that adequate cash flow is available to meet the cost of operations.

Combining a reasonable level of undesignated fund balance with specific legally established reserve funds provides resources for both unanticipated events and other identified or planned needs.

Two things I suspected were confirmed this year while working with numerous counties during the pandemic-induced recession: (1) many counties are suffering from anemic revenue levels, which produce anemic budgets; and (2) many counties have very little or no reserve funds and no unappropriated general or road fund balances.

I suppose taxes are not popular, but they are necessary. I’m on the same page with Mark Cuban, the American entrepreneur, investor and owner of the Dallas Mavericks. He says, “While some people might find it distasteful to pay taxes, I don’t. I find it patriotic.” Paying taxes in my home county of Randolph gives me a feeling of responsibility, of being a part of the fabric of my county and community, of contributing to the common good.

It is time for the counties that have not done so to do it — maximize your general and road millages for the good of the county or at least start on that forward path. The property tax is a progressive tax, not a regressive tax. Many of your constituents would be affected very little. Here’s why. Without going into great detail, Arkansas taxpayers are eligible for an annual tax credit up to \$375 against the property tax on a homestead. Many people own a home where the tax on the homestead is not even \$375 or only slightly over. The county gets the value of the credit from the State Property Tax Relief Fund. There are other provisions of Amendment 79 that help keep property taxes from jumping immensely at one time such as limiting the

annual increase of assessed value after a reappraisal and freezing the assessed value of the homestead of a disabled person or a person 65 years of age or older.

The property tax is the available tax base that offers the greatest promise for effective local fiscal decision making. Take the bull by the horns and do what is necessary to properly diversify your revenue sources so that you are not so reliant on volatile sources of revenue and at the same time start building needed reserve funds. In sum, the property tax is a stable, adequate, and reliable source of county revenue. Maximize the county millages, and it keeps you from putting all your eggs in one basket. Don't fiddle around like Nero did. Remember what happened to Rome?

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## ***Ethics in County Government Have Real Value***

***By: Eddle A. Jones, Consultant  
Association of Arkansas Counties***

Zig Ziglar, who was an American author and motivational speaker, said, "The most important persuasion tool you have in your entire arsenal is integrity." We often hear the term government ethics used in the media and by politicians and political commentators, yet it isn't always clear what is meant by this term. Generally speaking, ethics refers to the study of right and wrong behaviors.

In our daily lives we are constantly faced with important questions about what to do. We face the same thing in our government jobs. As Martin Luther King said, "The time is always right to do what is right."

Many times a public official will say, "But I didn't know." Guess what? That doesn't matter. You took an oath to uphold the laws of the State of Arkansas, the State Constitution, and the U.S. Constitution ... "So help me God." County officials and all public servants have a responsibility to uphold the law. The law is there to learn. Don't blame someone else for your ignorance. Buckle down and learn the law. That's your job. And there are ethics to observe in carrying out those laws.

Government ethics refer to the unique set of duties public officials owe to the public they serve. These duties arise upon entering the public work force either as an elected official or a member of government staff. So for simplicity's sake, please know that when we refer to public officials, we are referring to all public actors, be they elected, appointed or hired.

The relationship between public officials and the public can be described as fiduciary in nature. The term fiduciary is defined as relating to "a person to whom property or power is entrusted for the benefits of another."

Examples of fiduciary relationships include those of the attorney/client, executor/heir, and principal/agent. You can readily see why the public official/citizen relationship is similar. The electorate delegates governing authority to public officials to exercise discretion over the public treasury; to create laws; and to administer programs and government functions that will impact their lives. The public trusts that the public official will act in the public's best interest.

Ethical obligations for government officials are not a new concept. In Ancient Greece, Plato called for death for public officials who took bribes. In 1215, King John of England signed the Magna Carta, which promised among other things, "To no one will we sell, to no one deny or delay right or justice." Not long after that in 1254 King Louis IX of France promulgated conflicts of interest rules for provincial governors.

In 1776 our Declaration of Independence acknowledged the concept of delegated authority. It says in part:

**"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed."**

History concludes that several delegates attending the constitutional convention in 1787, including James Madison and Alexander Hamilton, advocated for a fiduciary form of government. Maryland representatives literally declared themselves to be the trustees of the public.

Ethical duties flow from the public fiduciary relationship — then and now. Those obligations include duties of care, loyalty, impartiality, accountability, and preservation of the public's trust in government.

The duty of "care" requires that the public official competently and faithfully execute the duties of the office. That includes managing assets competently and being good stewards of the public treasury; using due diligence in the selection and

supervision of staff/employees; following the rules; and upholding the constitution and laws. That takes us back to one of my opening statements. You must put in the time to learn your duties and the laws governing your office and county government in general.

To be ethical you must be loyal. To whom? Public fiduciaries have an absolute obligation to put the public's interest before their own direct or indirect personal interests. You breach that obligation when you benefit at the public expense. Prohibited benefits can be financial, career related, or personal, such as benefits to family members or close associates. When general ethical duties to family or friends conflict with duty to the public, the public duty must always prevail. Public officials have a duty to represent all of their constituents fairly and impartially. This means you cannot favor those of your own political party over other constituents, or let the fact that someone voted against you impact your ability to act fairly. You must overcome any inherent bias that you possess. A public official must avoid targeting particular constituencies for favor or for punishment. Bottom line — the Equal Protection Clause of the U.S. Constitution is in essence a codification of the duty of impartiality.

What about accountability? Without a duty of accountability, the public's ability to monitor the behavior of public officials would be severely limited. From the duty of accountability comes the duty of transparency and the concepts of disclosure, open meetings, and accessibility of public records. The courts have ruled "implicit in the democratic process is the notion that government should be accountable for its actions ... and individuals must have access to government files...." That's why in Arkansas we have the Freedom of Information Act of 1967 as amended, codified as § 25-19-101 et. seq. The people's right to know what its government is doing has been enshrined as a fundamental right in law.

Does it sometimes seem onerous to comply with making records available to Arkansas residents? Yes, it does. But as public officials we must always be transparent and willing to disclose any of our actions and records of those actions, unless it's something protected by law from disclosure. It takes extra effort but that's part of public service.

Without public trust, government doesn't work. Trust in government is so important that public officials are charged with protecting and maintaining the public trust. As stewards of the public trust, officials have a duty to avoid even the appearance of impropriety. So even if a particular course of conduct does not meet all of the elements necessary to constitute a violation of law, it nevertheless may be unethical if it creates even the perception of wrongdoing that will harm the public trust. The Institute for Local Government advises public officials to always ask themselves whether it would be a bad thing for a particular course of conduct to be reported on the front page of the local newspaper.

Civility and respect toward colleagues and the public also help ensure the public's trust in the efficiency and effectiveness of government. Rancor and animosity displayed by county officials and quorum court members toward each other causes the public to wonder if private feuds are taking precedence over the common good of the county. When constituents are treated with lack of respect, it causes the public to doubt the fairness of their treatment.

I fully understand that people have become cynical and suspicious of its government. But what do we expect in a nation where political animus is running rampant? As public servants in the great state of Arkansas we need to do our part to correct that. Public service requires a continual effort to overcome cynical attitudes and suspicions about the people in government. We really are here to serve.

For the citizenry of your county to retain its trust in government, it must have confidence that those in public service are at all times acting in the best interest of the public. As stewards of the public trust, county government leaders and employees have a responsibility to act in a manner that is fair and unbiased, that is loyal to the public by putting public interest before personal gain, and that fulfills duties of competency, integrity, accountability, and transparency.

In fulfilling these duties you will encounter unavoidable ethical dilemmas. Dilemmas involving fairness; dilemmas involving conflicts between personal interests and the public's interests; dilemmas involving the faithful execution of your official duties; dilemmas involving acting with integrity; and dilemmas involving accountability.

The life of a great public servant is not easy. Only those that really want to be a servant should enter the field of public service. Public officials have the responsibility to uphold the law and serve ethically.

Upholding the law is one thing. You must learn the law. Don't blame anyone else for your ignorance if you don't know the law concerning the duties and operations of your office. It's there to learn, but it doesn't jump into your brain on its own. You must apply yourself and study.

Secondly, you have a responsibility to apply the law and all of your public service actions in an ethical manner. "Do unto others as you would have them do unto you." The ultimate learned ethical behavior is contained in the ancient translation of the Golden Rule. Learning to make ethical choices begins at birth and is a life-long growth process. Ethics are a requirement for

deciding on a course of action. Ethical belief systems are established and learned in life through environments of home, school, religion and social gatherings that mold and shape those ethical beliefs.

If you are to be ethical the flip side is “Don’t Be Unethical.” What sorts of conduct are commonly considered unethical? They include but are not limited to:

- Theft and fraud by public officials. One of the more serious ethical issues in government is theft of public property. It can range from the trivial, like taking home office supplies, to the grave, such as stealing money from the county. Fraud is probably the most common and costly form of theft by public officials. Fraud is theft by deception or trickery. It occurs when someone deliberately deceives others in order to unjustly gain personally.
- Improper use of government property. This probably happens in county government more than anything else. The use of public property by public officials for private benefit is unethical and against the law.
- Bribery and influence peddling. Bribery occurs when a person of authority is offered and accepts some personal benefit in exchange for performing some action. Influence peddling is a particular form of bribery in which a public official sells his or her ability to influence government decision making.
- Conflict of interest and self-dealing. This is a common issue in government ethics and occurs when a public official’s private interests are such that they may influence the performance of his or her public duties. Public servants are expected to exercise impartiality and objectivity when performing official duties. When there is a conflict of interest, there is a concern that the official may favor some interest other than the general public. Self-dealing is one of the most obvious. This occurs when an individual’s activities in their official capacity involve dealing with their self in a private capacity, usually for personal benefit.

As a public official the responsibility lies squarely on your shoulders. Not someone else’s. Don’t be an “Adam.” Adam, in Genesis 3:12 said, “The woman you put here with me ... she gave me some fruit from the tree and I ate it.” That triggers thoughts. How many times have you been guilty of blaming someone else? Sounds like Flip Wilson’s famous statement, “The devil made me do it!”

Yep, good ole Adam invented the oldest line ever used to shift blame to someone else for his own actions. Take responsibility for your actions.

Public service is an honorable profession when carried out honorably. One of our founding fathers, Thomas Jefferson, said, “Honesty is the first chapter in the book of wisdom.” The supreme quality for public leadership is unquestionably integrity. Without it, no real success is possible. There is real value in ethical service. As Mark Twain said, “Do the right thing. It will gratify some and astonish the rest.”

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## ***How to Run a Meeting – The Right Way***

***By: Eddle A. Jones, Consultant  
Association of Arkansas Counties***

Nothing like the announcement of a “meeting” to get most people in a bad mood. The words “meeting” and “fun” go together like cheese and Nutella. When I was a boy, my mom wore a mood ring. When she was in a good mood it turned blue. In a bad mood, it left a big red mark on my forehead. I didn’t know it then, but apparently, she attended a lot of meetings.

Why have a meeting anyway? A great many important matters are quite satisfactorily conducted by a single individual who consults nobody. A great many more are resolved by a letter, a memo, a phone call, or a simple conversation between two people. Sometimes a few minutes spent with several people separately is more effective and productive than a meeting with them all together which can last who knows how long. Certainly a great many meetings waste a great deal of everyone’s time and seem to be held for historical rather than practical reasons.

However, county government is a public entity — a political subdivision of the state for the more convenient administration of justice and the exercise of local legislative authority related to county affairs [§ 14-14-101]. Being a representative government, we must conduct our business in the open. The residents of our counties have the legal and moral right to know how their local government business is being conducted and how their tax money is being spent.

The legislative power of county government is vested in the quorum court of each county, subject to the limitations imposed by the Arkansas Constitution and by state law. Each county quorum court is made up of 9, 11, 13, or 15 members depending on the population of the county. The county judge, as the chief executive officer of the county, serves as the presiding officer of the quorum court without a vote but with the power of veto.

The quorum court is required by state law to meet no less than one time a month. The court’s organizational ordinance must establish the regular monthly meeting date, time and location. This ordinance may also provide for additional monthly meet-

ings; regular committee meetings; and should declare the court's rules of procedure, whether by Robert's Rules of Order or otherwise. Most county quorum courts use Robert's Rules of Order as their guide.

Henry Martyn Robert was an engineering officer in the Army. One day he was asked to preside over a meeting and he realized he didn't know how. But, he tried to run the meeting anyway and before it was over he was humiliated with embarrassment. With that bad experience under his belt, he decided he would learn all he could about parliamentary procedure so he would never experience that situation again. What he found was a lot of chaos about how to run a meeting.

Everywhere he went, he found people with differing ideas of how meetings should be conducted, based primarily on what they had become accustomed to. Every one of us has probably been guilty of saying something like, "But, that's how we've always done it."

Mr. Robert decided he would establish one standard procedure and try to make a little order out of what he had seen, which was a procedural nightmare. We know that standard as Robert's Rules of Order, which most Arkansas quorum courts use — or at least say they do. The original version was published in 1915. Today you can find the 12th revision available in most bookstores and online.

I encourage all county judges; all quorum court members — who are called justices of the peace; all county clerks as the secretary to the quorum court; all county attorneys, and any other personnel employed by the quorum court to have a good understanding of Robert's Rules of Order — at least the basics. You should also know the types of motions such as a privileged motion; a subsidiary motion; a main motion; and an incidental motion. You should know the purpose of each type of motion. And whether a second is required; whether it is debatable or amendable; and what vote count is required — majority present, majority of full court, 2/3, none, or chair rules.

Another source of material for quorum court meetings and proceedings is found in state law. The county judge and justices in particular should practically memorize or keep very handy Title 14, Chapter 14, and Subchapter 9 of the Arkansas Code, which covers the legislative authority vested in the quorum court, along with the administration and general procedures required of Arkansas quorum courts. If anything in state law conflicts with Robert's Rules of Order, then state law prevails.

Robert's Rules contains some basic rules that are meant to make it fairly easy to run a meeting and move the agenda along. Let's look at a few of those basic rules as outlined by a publication of the National Association of Counties (NACo) and consign them to an Arkansas County Quorum Court meeting.

**The Chair** — All quorum court meetings are facilitated by a chairperson who is responsible for making sure the meeting is conducted smoothly and fairly. The county judge is the chairperson, or as state law calls it, the presiding officer of the quorum court with no vote but with veto power [Amendment 55, § 3; § 14-14-904(d)(1)(A); § 14-14-1101(a)(1)]. In the absence of the county judge, a quorum of the justices by majority vote elects one of their number to preside but without the power to veto [§ 14-14-904(d)(1)(B)]. The presiding officer is impartial during all debate. The presiding officer does not have final decision-making authority. The meeting participants — the justices of the peace — have this authority.

**Main Motion** — The basis of discussion at a meeting is a motion. A motion is put forward by a quorum court member for the purpose of focusing the discussion. Each main motion must have a "mover" — the person who makes the motion — and a "seconder" who shows that there is some support for the motion. When a motion is put on the floor for discussion, the discussion must focus on the substance of the current motion. All other discussion is out of order and not to be allowed. Another motion cannot be introduced while there is a motion on the floor.

**Order** — It is important that meeting participants — justices of the peace — are acknowledged in order. Once a motion has been introduced, it is the presiding officer's responsibility to maintain a list of speakers to manage discussion in an orderly manner. The participant who seconds the motion is always given an opportunity to speak after the mover. A member does not get a second chance to speak until all members of the court who want to speak on the motion have had an opportunity to do so.

**Amendments** — A person who legally has the floor can amend the main motion currently being debated. An amendment is another motion that is used to change by adding, subtracting or completely changing the main motion under discussion. When the amendment has been moved and seconded, all subsequent discussion must be on the substance of the current amendment. An amendment to a motion can be amended once. An amendment can be passed by a simple majority. If an amendment is passed, defeated or withdrawn, the discussion goes back to the main motion on the floor with comments based on whether the amendment passed.

**Point of Order** — If a quorum court member believes that the meeting is progressing outside of the rules of order, he or she can raise a "point of order." When raising a point of order, the person states what rule or order has been violated or not

enforced by the chairperson. A point of order can be used to interrupt a speaker. The chairperson has the responsibility of determining if the point is valid. A point of order cannot be used to comment on a motion out of turn.

**Point of Privilege** — A point of privilege can be used to interrupt a speaker. Any member of the court who feels that his or her rights have been infringed upon or violated may bring this point by simply stating their problem. Privilege involves the comfort or accessibility of the meeting participant and can include such things as can't hear, too noisy, unclear copies, etc. Or it could be more personal actions such as misquotes, misinterpretations or insults. The presiding officer has the responsibility of determining if the point is valid.

**Challenge the Chair** — If a meeting participant feels that his/her point of order or point of privilege was ruled on unfairly by the chairperson, a challenge can be made to the chairperson. The chairperson then can ask for a motion to uphold the chair's decision and a vote is taken. The vote by the full court will decide whether the presiding officer's action on the point was valid.

**Point of Information** — A point of information is a question raised by a member of the quorum court while another has the floor. The question can be raised, but the person who has the floor may refuse the question. The chairperson asks the speaker if he or she wants to entertain the question when asked. The speaker can refuse. A point of information is only a question and cannot be used to speak out of turn, harass a speaker or disrupt the flow of the meeting.

**Table** — If a quorum court member feels that the decision and vote on a motion needs to be delayed for whatever reason, that member can move to "table" the motion. A meeting participant must be recognized by the chairperson in order to table a motion and cannot request this action at the end of a speech. Generally a specific time limit is mentioned when tabling the motion so as not to leave the motion dangling. A motion to table requires a simple majority vote. The discussion allowed after a vote to table can only be about the length of the tabling.

**Calling the Question** — If a member of the court thinks that additional discussion or debate will be unproductive, he or she may "call the question," which can end discussion or debate. If no other quorum court members object, the meeting proceeds to the motion. If there is an objection, the participants vote on whether to end the debate. A two-thirds majority vote is required and no debate is allowed. If the "calling the question" is passed, a vote on the main motion is taken with no additional discussion or debate.

**Suspension of the Rules** — Any motion for suspension of the rules must have a two-thirds majority of the full number on the court to succeed. This motion is used so that meeting participants can do something in violation of the normal rules. In county government it is most used to subvert the rule of reading an ordinance or an amendment to an ordinance on three different meeting days. There is no debate allowed. This motion cannot be amended and cannot be reconsidered at the same meeting.

**Adjourn** — A motion to adjourn takes precedence over all other motions, except a motion to fix the time to adjourn. This motion cannot be debated or amended, nor can a vote to adjourn be reconsidered. A motion to adjourn cannot be made when a speaker has the floor, or when a vote is being conducted. This motion does need a second and takes a majority vote to pass. If a majority does not vote in favor, the meeting continues.

These are just a few of the basic rules you need to know about the actual conduction and participation of a meeting. There is so much to know, but you asked to be county judge or a justice of the peace. No one should ask to be elected to an office if they don't intend to spend the time to properly learn all the functions of the job. Every county judge and quorum court member should own or have available to them the following:

- Robert's Rules of Order or the rules adopted by your court;
- Procedural Guide for Arkansas County Quorum Court Meetings by the University of Arkansas, Division of Community Affairs, Division of Continuing Education and the Association of Arkansas Counties; and
- Title 14 of the Arkansas Code Annotated — especially Chapter 14. The Arkansas County Compliance Guide available through the Association of Arkansas Counties is a good source for this and it contains much more than Title 14.

Many other things are involved in running a meeting the right way. Like the agenda. The agenda may be the most important piece of paper at the meeting. Properly drawn up, it has the power of speeding and clarifying a meeting that very few people understand or harness. The primary fault is to make the agenda unnecessarily brief and vague. For example, the phrase "county budget" does not tell much, whereas the longer explanation "to discuss the proposal for reduction of the 2020 county budget now that revenues are known to be less than projected" helps all court members to form some views or even to look up facts and figures in advance.

The presiding officer should not be afraid of a long agenda, provided that the length is the result of his or her analyzing and defining each item more closely, rather than adding more items than the meeting can reasonably consider in the time allowed. The chair should also bear in mind the useful device of heading each item "For information," "For discussion," or "For decision" so that members of the quorum court know where they are trying to get to.

The order of items on the agenda is important. The early part of a meeting tends to be more lively and creative than the end of it, so if an item needs mental energy, bright ideas, and clear heads, it may be better to put it high up on the list. Equally, if there is one item of great interest and concern it may be a good idea to hold it back for a while and get some other useful work done first. Then the star item can be introduced to carry the meeting over the attention lag that sets in after the first 20 to 30 minutes of the meeting.

Some items unite the meeting in a common front while others may divide members. The presiding officer may want to start with unity before entering into division, or he or she may prefer the other way around. The point is to be aware of the choice and to make it consciously, because it is apt to make a difference to the whole atmosphere of the meeting. It is almost always a good idea to find a unifying item with which to end the meeting.

All items should be thought of and thought about in advance if they are to be usefully discussed. Listing "Any other business" on the agenda is an invitation to waste time. This does not preclude the presiding officer's announcing an extra agenda item at a meeting if something really urgent and unforeseen crops up or is suggested to him or her by a court member, provided it is fairly simple and straightforward.

If the chairperson is to make sure that the meeting achieves valuable objectives, he or she will be more effective seeing their self as the servant of the group rather than as its master. The role then becomes that of assisting the court toward the best conclusion or decision in the most efficient manner possible: to interpret and clarify; to move the discussion forward; and to bring it to a resolution that everyone understands and accepts as being the will of the meeting — even if some individual members do not necessarily agree with it.

The presiding officer's true source of authority with members of the quorum court is the strength of his or her perceived commitment to their combined objective and his or her skill and efficiency in helping and guiding them to its achievement. Just as the driver of a car has two tasks — to follow the route and to manage the vehicle, so the chairperson's job can be divided into two corresponding tasks — dealing with the subject or subjects and dealing with the people.

At the end of the discussion of each agenda item, the presiding officer should give a brief and clear summary of what has been agreed on. This can act as the dictation of the actual minutes. It serves not merely to put the item on record, but also to help the court realize that something worthwhile has been achieved. If the summary involves action by a member of the meeting, he or she should be asked to confirm their acceptance of the summary.

Part of dealing with the people is starting the meeting on time. There is only one way to ensure that a meeting starts on time, and that is to start it on time. Latecomers who find that the meeting has begun without them soon learn the lesson. The alternative is that the prompt and punctual members will soon realize that a meeting never starts until 10 minutes after the scheduled time, and they will also learn the lesson. Start the meeting on time.

When you close the meeting, close it on a note of achievement. Even if the final item was contentious or left unresolved, you can refer to an earlier item that was well resolved as you close the meeting and thank the court for their work and service.

The need for meetings of the quorum courts of Arkansas is clearly something more positive than just a legacy from our past. We are a representative government, therefore local legislation; policy; and spending authority is governed by a group representing the residents of each county. All power is not vested in one person. These meetings are necessary, not just because the law mandates them, but because county government is a very important level of government, and decisions must be made in a corporate manner in a representative government.

Without elaborating I'll summarize with a few tips for conducting concise, highly effective quorum court meetings:

- Come prepared;
- Encourage participation;
- Stay on schedule;
- Wrap up thoroughly; and
- Always — both the presiding officer and court members — remain civil!

Civility is the way we treat each other with respect, even when we disagree. Even though disagreement and confrontation play a role in government and politics, the issue is how that disagreement is expressed. The key is to focus on the strengths and weaknesses of proposed solutions to county problems and issues, not to engage in personal attacks against those who favor different solutions.

I have been in Quorum Court meetings where civility was not present. That should not be. The presiding officer should never be put in the position to say, “Is there a second to Ted’s motion to ignore Mike’s ideas?” Run a meeting and participate in a meeting the right way.

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## ***The Great Story of County Government***

***By: Eddie A. Jones, Consultant  
Association of Arkansas Counties***

Glen Campbell, the Pike County, Arkansas-born singer, guitarist, songwriter, television host, and actor said, “Great stories start with great opening lines. I’m a lineman for the county — what a great way to start a song.” I’m a Judge for the county; I’m a Sheriff for the county; I’m a Clerk for the county; I’m a Treasurer for the county; etc. What a great way to start the story of county government.

I’ve been in county government nearly four decades but some of you are just starting your journey. Do you actually know what you have become a part of and why? Let me say as I begin this story of county government, that if you have been elected to a county government office for any other reason than to be a good and ethical leader of your county you have been elected for the wrong reason.

You may have heard stories like this one before entering county government: A fellow stopped at a rural gas station, filled his tank, and took a break by his car while drinking a soda.

As he relaxed, he watched a couple of men working along the roadside.

One man would dig a hole two or three feet deep and then move on. The other man came along behind him by about 25 feet and filled in the hole. The men worked right past the fellow with the soft drink and went on down the road. Overcome by curiosity, the fellow headed for the first man.

“Hey there,” he said to the men. “Can you tell me what’s going on here with this digging?”

“We work for the county government,” one of the men said.

“But one of you is digging a hole and the other is filling it up. Isn’t that a waste of the county’s money?”

“Well,” one of the men replied, “normally there’s three of us — me, Rodney, and Mike. I dig the hole, Rodney sticks in the tree, and Mike here puts the dirt back.”

“Yeah,” Mike added. “Just because Rodney’s sick, that don’t mean we can’t work, does it?”

Stories like these are fictitious — at least 99 percent of the time.

In the United States, an administrative or political subdivision of a state is a county, which is an area having specific boundaries and a specific level of governmental authority that differs from state to state. The term “county” is used in 48 states. Louisiana has parishes, and Alaska has boroughs — functionally equivalent to counties.

As of 2018, there are 3,142 counties and county-equivalents in the 50 states and the District of Columbia. The number of counties per state ranges from only three counties in Delaware to 254 counties in Texas. As you know, we have 75 counties in Arkansas.

The specific governmental powers of counties vary widely between the states. Counties have significant function in all states except Rhode Island and Connecticut, where county governments have been abolished but the entities remain for administrative or statistical purposes. The Commonwealth of Massachusetts has removed most government functions from eight of its 14 counties.

The site of a county’s administration and the county courthouse is called the county seat. It’s called the parish seat in Louisiana and the borough seat in Alaska. Several New England counties use the term “shire town” for the county seat, harkening back to the days in England.

Originally counties were placed so that a county seat would be no more than a day’s journey for everyone within the county borders. That is the principal reason we still have ten counties in Arkansas with two county seats. They are no longer needed for that particular reason, but they still exist and apparently a majority of their residents want it to remain that way. Arkansas ties with Mississippi as the states with the most counties with two county seats.



However, modern U.S. counties share no equivalence in either geographic size or population. Arlington County, Virginia, is 26 square miles in size, while the North Slope Borough of Alaska is 94,796 square miles. Arkansas counties range in size from Lafayette County's 545 square miles and Sebastian County's 546 square miles to Union County's 1,053 square miles. The U.S. County with the largest population is Los Angeles County, California, with 10,163,507. The least populated county is Kalawao County, Hawaii, with only 90 residents. Loving County, Texas, is not far behind with 95 residents. Arkansas counties range in size from Calhoun County's estimated 2019 population of 5,368 to Pulaski County's 2019 estimated population of 393,956.

Counties were among the earliest units of local government established in the Thirteen Colonies that would become the United States. Virginia created the first counties in order to ease the administrative workload in Jamestown. The House of Burgesses divided the colony first into four "incorporations" in 1617 and finally into eight shires or counties in 1634. America's oldest intact county court records can be found at Eastville, Virginia, in Northampton (originally Accomac) County, dating to 1632. Maryland established its first county, St. Mary's, in 1637, and Massachusetts followed in 1643. Pennsylvania and New York delegated significant power and responsibility from state government to county governments and thereby established a pattern for most of the United States. The first county established in Arkansas was Arkansas County in 1813.

Anthony Albanese said, "Despite the enormous role that local government plays in our daily lives, the constitution makes not one mention of it." And that's true. When independence came, as a National Association of Counties (NACo) publication said, "The framers of the Constitution did not provide for local governments. Rather, they left the matter to the states. Subsequently, early state constitutions generally conceptualized county government as an arm of the state." In the 20th century, the role of local governments strengthened and counties began providing more services, acquiring home rule and legislative bodies to enact local ordinances or laws that do not conflict with state or federal law.

The powers of counties arise from state law and vary widely. In Connecticut and Rhode Island, as I mentioned earlier, counties are geographic entities, but not governmental jurisdictions. At the other extreme, Maryland counties handle almost all services, including public education. North Carolina counties have the responsibility of public education. And there are other states where counties shoulder the responsibility of education, Medicaid and other social services, mental health, community colleges, and the list goes on. Medicaid and Aid to Dependent Children is the largest category of expenditure for New York county government. And now we know why property taxes are so high in some states.

Having taken a quick look at county government structure across the country, let's bring it home to Arkansas where you serve. A county is defined in the very beginning of county government code in Title 14 of Arkansas Code Annotated (A.C.A.). A.C.A. 14-14-102 says, "A county is a political subdivision of the state for the more convenient administration of justice and the exercise of local legislative authority related to county affairs and is defined as a body politic and corporate operating within specified geographic limitations established by law."

County government in Arkansas has changed over the years. We have always had a quorum court and the elected officials that we currently have, but the operation has changed. Quorum courts are described in Article 7 of the 1874 Arkansas Constitution. They "sit with and assist the County Judge in levying the county taxes, and in making appropriations for the expenses of the county.

Quorum courts and county judges were part of Arkansas even during its time as a territory and have been described in all the constitutions of the state. As their names imply, quorum courts, justices of the peace, and county judges originally had more of a judicial function rather than the primary legislative and executive functions they now have. The 1874 Constitution required that each county have one justice of the peace for every 200 voters and a minimum of two per township, but the quorum court met only once each year to levy the taxes and rubber stamp the county budget that had already been drafted. One JP for every 200 voters. Can you imagine the size of the quorum court in Pulaski County under those requirements?

County judges ran the county the rest of the year. By the middle of the 20th century, this unwieldy system had given county judges nearly unlimited power within their counties. Various efforts began to reform Arkansas' system of county government.

A new Arkansas constitution was proposed in 1970 and it would have replaced the county government system with something similar to what we have today. The voters of Arkansas did not approve that constitution.

Soon after the proposed Arkansas Constitution of 1970 was reduced to shambles by the Arkansas voters' rejection of it in November 1970, Governor-elect Dale Bumpers of Charleston named a committee to study the possibility of presenting fragments of the document to the voters. Soon after his inauguration, this committee, chaired by Clark County Judge Randall Mathis, one of the few county officials in the state who had supported the Constitution of 1970, began studying the matter. The committee turned its attention from the beginning to that portion of the document that had purported to deal with county government.

During 1971, Mathis' committee consulted with legislators, members of the Governor's staff, former Constitutional Convention delegates, the Association of Arkansas Counties (AAC) and county officials in an effort to draft a proposal that would be acceptable to members of those diverse groups. The committee actually began its work by using county government provisions of the Local Government Article of the Constitution of 1970 as a starting point and sought ways to make it palatable to various interest groups and voters of Arkansas. The committee submitted its proposal to the General Assembly in 1973. The General Assembly voted to propose the amendment to the Constitution and place it before the people of Arkansas on the November 1974 general election ballot. It passed narrowly with 51.5 percent of the vote and became Amendment 55 to the Arkansas Constitution. Most of this amendment became effective Jan. 1, 1977.

Amendment 55 radically reformed county government in Arkansas, though the county executive's titles are relics from the 1874 state constitution. County judges were transformed into county executives in many ways to conduct county business and to carry out and enforce the ordinances enacted by the quorum court. However, the county judge retains some judicial authority under Article 7 of the state constitution as judge of the county court.

One great impact of this reform was reducing the number of JP positions on quorum courts so they could serve as legitimate legislative bodies, thereby increasing legislative efficiency. Justice of the Peace positions were reduced from 2,800 in 1974 to 751 in 1977. The number of Justices of the Peace is currently 783 because of the change in population of counties since the inception of Amendment 55. The county election committee redraws JP districts after each decennial census.

As the legislative body of county government, the quorum courts have the duty to levy taxes and appropriate funds for the county budget. They also fix the number and compensation of deputies and county employees; set the compensation of county elected officials within a minimum and maximum established by law [the fee system of compensation yielded to a salary system under charges that fee-based compensation led to rampant corruption]; and fill vacancies in elective constitutional county offices. They provide for any service or performance of any function relating to county affairs and exercise other powers not inconsistent with law necessary for effective administration of authorized services and functions of county government. [§ 14-14-801(b)]

Each quorum court is now required by state law to meet monthly. The county judge chairs the meeting. The judge has no vote on decisions made by the quorum court but can veto its decisions. The quorum court can overturn the judge's veto with a three-fifths (60 percent) vote of the entire membership of the court. The size of the quorum court varies by county: the smallest counties have nine justices of the peace, while others have 11 or 13, and the three largest counties — Pulaski, Washington and Benton — have 15. Justices of the Peace on a quorum court are paid per diem [per meeting] rather than receiving a salary. Their pay scale is set by the Arkansas General Assembly, which establishes minimum and maximum per diems depending upon the size of the county.

Amendment 55 also gave counties "home rule" so they could enact regulations and create new programs as long as they were not specifically prohibited by the constitution or state statutes. The first provision of Amendment 55 says, "A county, acting through its Quorum Court may exercise local legislative authority not denied it by the Constitution or by law." While couched as a general grant of local autonomy, this provision grants significant alterations in the governmental authority and structure of county government. It was a grant of extensive legislative powers over local affairs, contrasting the very limited legislative power the quorum courts had under Article 7, § 30 of the 1874 Constitution.

The second significant change was the reversal of the concept known to students of government and the law as the "Dillon Rule" of municipal corporations. As early as four years after the adoption of the 1874 Constitution, the Arkansas Supreme Court said counties, like cities and towns, were municipal corporations created by the legislature and derive all their powers from it, unless otherwise provided by the State Constitution. The court rearticulated that position on several occasions, reaffirming it again as late as 1967. The practical effect of this general grant of authority in Amendment 55 — home rule — to county government gives the legislative body sufficient flexibility to handle local matters and obviate any inclination it might have to run to the General Assembly for special local authority over specific subject matter. Of course, the General Assembly and the State Constitution can deny or limit the exercise of local authority.

Amendment 55, a concise six-section amendment that can be printed easily on one sheet of paper, was implemented by the General Assembly through Act 742 of 1977 containing hundreds of sections. Those of us who have been around since the early days of Amendment 55 call Act 742 of 1977 the County Government Bible. Amendment 55, Act 742 of 1977 as Amended is a publication available on the AAC website under publications.

Arkansas law does prioritize county budgeting practices by telling counties what they must fund and what they may fund [§ 14-14-802].

Arkansas counties must fund: (1) The administration of justice through the several courts of record; (2) Law enforcement for protection services and the custody of persons accused or convicted of crimes; (3) Real and personal property tax administration, including assessments, collection, and custody of tax proceeds; (4) Court and public records management, as

provided by law, including registration, recordings, and custody of public record; and (5) All other services prescribed by state law for performance by each of the elected county officers of departments of county government. I hope you realize that “must listing” is telling county governments that they must adequately fund the county constitutional offices.

That same law provides a laundry list of services and functions that a county may fund, but are not required to fund. And, of course, the “may list” is not all-inclusive because of “home rule” that county government enjoys. Any service related to county affairs may be funded if not specifically prohibited by state or constitutional law.

County government is not solely made up by the quorum court and county judge. All 75 Arkansas counties have the following elected officials in one form or another. The following synopsis is not meant to be all inclusive of the duties of each office.

- **County Judge** — The chief executive officer of the county with the executive powers to preside over the county quorum court, without a vote but with the power of veto; to authorize and approve disbursement of appropriated county funds; to operate the system of county roads; to administer ordinances enacted by the quorum court; to have custody of county property; and to hire county employees, except those persons employed by other elected officials of the county. The county judge actually wears two hats. Not only is he or she the chief executive officer but also is a judicial judge of the county court having exclusive original jurisdiction in all matters relating to county taxes, any other case that may be necessary to the internal improvement and local concern of the county, and other jurisdiction. [Arkansas Constitution, Article 7, § 28; A.C.A. 14-14-1105]
- **County Sheriff** — The chief law enforcement officer in the county. The sheriff polices areas without local police, runs the county jail, and is an officer of the local courts. The sheriff’s office transports prisoners, serves subpoenas and, in many cases, acts as bailiff. The sheriff is also the tax collector in 25 Arkansas counties
- **County Assessor** — Values real property and personal property for taxation and maintains parcel records. In Arkansas the assessor’s office goes through a continual three- or five- year real property reappraisal process.
- **Circuit Clerk** — Collects, files, records, and processes legal court documents and reports to the Administrative Office of the Courts. Also responsible for court notices, warrants, subpoenas and maintaining a list of potential jurors. In Arkansas, with the exception of Sebastian County, the circuit clerk is also the county recorder, keeping an official county record of contracts, mortgages, plats, surety bonds, and deeds.
- **County Collector** — Collects tax revenues for the various tax entities including the county, municipalities, public school district, and numerous types of improvement districts. In many counties the collector also collects county solid waste fees and dues for volunteer fire departments and fire protection districts.
- **County Coroner** – Determines cause and manner of deaths in the jurisdiction. Two counties have an appointed coroner.
- **County Clerk** – The official bookkeeper of the county and payroll clerk [in most cases], maintains voter registration, issues marriage licenses, clerk of the quorum court, and clerk of the equalization board. The county clerk position is combined with the circuit clerk in 18 Arkansas counties.
- **County Treasurer** – Maintains county accounting records and issues monthly and annual financial reports, disburses tax revenues to municipalities, school districts and other jurisdictions, projects revenues for budget purposes; invests county money and acts as the county’s banker and finance officer. The treasurer is also the tax collector in five Arkansas counties.
- **County Surveyor** — A registered land surveyor who surveys at the request of the county assessor or county judge, as well as assisting the public with property surveys or legal descriptions. Many counties have left this position vacant for years.

Let’s go back to the definition of an Arkansas county. It is defined in law, by the implementing legislation of Amendment 55 as “a political subdivision of the state for the more convenient administration of justice and the exercise of local legislative authority related to county affairs...” The word I consider the most important word in this Arkansas law is the conjunction “and.” A word connecting two separate clauses and two separate functions: (1) the state function of justice conveniently administered in accordance with law by county government; and (2) the local function of legislative and administrative authority relating to county affairs.

The State of Arkansas recognized decades ago the moral and legal obligation [Article 16, § 2] they had to counties. They realized the state must provide financial assistance to counties in order for the state’s citizens to have any equity and equality in the justice system that counties are required to provide — state services. I doubt that at the time they had any clue how profoundly correct that was. However, a 2015 study revealed that counties are subsidizing the state court system by about \$50 million, not to mention other state mandates that counties are funding to the detriment of county infrastructure and pay for employees. I’ll save this discussion for another article.

If I were running for Governor or for a General Assembly seat — and I’m not — this would be part of my campaign platform: “I’ll work to reverse cuts to the County Aid Fund and will work to increase the appropriation to that fund to cover the costs of our counties in providing and administering state services. They should be able to use their county revenues for county services

and for paying their employees a decent wage. I will work with counties across this state to combat the challenges they face. Counties are our partner, our helper in delivering state services. They deserve proper respect of the state. We serve the exact same constituency. County government leaders, I'm on your side."

So, after finishing my imaginary campaign speech — in all honesty, we need to find a way of having a real conversation on how you fund county government that works under so many state mandates requiring monetary expenditures. Underfunding has been a part of our long history.

Be proud you are a county elected official — a leader. When you are in county government, you are on the ground, and you are looking into the eyes and hearts of the people you are there to serve. It teaches you to listen; it teaches you to be expansive in the people with whom you talk to, and that engagement gives you political judgment.

Jack Gardner said, "Leaders come in many forms, with many styles and diverse qualities. There are quiet leaders and leaders you can hear in the next county. Some find strength in eloquence, some in judgment, and some in courage." I say just lead in your style — but lead.

I end our Great Story of County Government with a little trivia. The newest county in the United States is the city and county of Broomfield, Colorado, established in 2001 as a consolidated city-county. The newest county-equivalent is the Alaskan borough of Petersburg established in 2013. The newest Arkansas county is not very new — Cleburne County established in February 1883, formed out of parts of White, Van Buren and Independence counties and named after Gen. Patrick Cleburne, a Confederate general of the Civil War.

Back in the day, I was always glad to say, "I'm a treasurer and comptroller for the county." You fill in the blank for yourself. County government is great and it's a great story to tell.

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## ***The History and Administration of Arkansas Property Taxes***

***By: Eddle A. Jones, Consultant  
Association of Arkansas Counties***

Arthur Godfrey, the American radio and television broadcaster and entertainer, once said something like this, "I'm proud to be paying taxes. The only thing is — I could be just as proud for half the money." But Oliver Wendell Holmes, Jr., an early 20th-century Supreme Court jurist, said what most any level-headed person would think and say, "Taxes are what we pay for civilized society."

### **History**

Surveys find that the "property tax" is the most hated of all taxes. Why is it, detractors say, that you have to keep paying the government on something that you own — forever? Or, in the words of one protester on YouTube, property tax is "oxymoronic, unjust, and un-American!"

On that last point, he's onto something, at least on a literal level: The origins of the property tax aren't American at all. It, instead, has roots that date back to Europe's feudal system. First instituted in England by William the Conqueror in 1066, the early tax system worked this way: A king (or conqueror) took over all the land in a given territory. He would then divide it among his lieutenants and supporters, who would pay him (with money or services) in order to keep that land. In return, landholders enjoyed the king's protection and were able to rent the property out to others who would live and work the land for a fee. The punishment for nonpayment was forfeiture of the land. At the time, this system was called "free and common socage." The person who held the land was called a socman, his taxes — socage. The arrangement created a way for people to own land while still having to remain loyal to the crown, which also had rights to the land.

After expansion across the Atlantic started, King James made sure that this system traveled overseas with the first settlers at Jamestown, so he could partake in the profits of exploration of the new land. The charter of the Virginia Company held that, as in feudal times, the king would protect the lands in Jamestown, and in return, the people living on the land would pay him a share of their profits.

When the colonists revolted and property owners no longer had a king to answer to, the new American government had to figure out who actually owned the land. It was decided that the government would step into the role the king once held. The Northwest Ordinance established that the federal government owned all the lands, and the state served as the "donor," which essentially meant the person who collected the fees from the tenants. After the Northwest Ordinance, when land was sold to an individual, the state had the right to collect payment from that individual in perpetuity. This was a system very similar to

free and common socage called “fee simple.” That basic principle, and terminology, persists today: Anyone buying a house will notice the term “fee simple” in their legal documents stating that they own the land and property, which is still subject to taxes.

It’s a peculiar note of history that the founding fathers, who spoke often of abolishing the feudal system, kept this remnant of the Old World. But the rationale is very simple: They needed the money. In fact, the federal government levied a national property tax in 1798, 1814, 1815, 1816, and 1861. These taxes usually outraged residents, who would often revolt, but the system of collecting property tax remained. That’s because property taxes were locally collected and spent, and often paid for things like roads that property owners would be able to see, and that increased the value of their property. Sound familiar?

Property taxes in the United States, as we know them, originated during colonial times after the American Revolutionary War. By 1796, state and local governments in 14 of the 15 states taxed land. Delaware did not tax property, but rather the income from it. Arkansas, of course, did not exist as a state yet.

During the period from 1796 until the Civil War, a unifying principle developed: “the taxation of all property, movable and immovable, visible and invisible, or real and personal at one uniform rate.” During this period, property taxes came to be assessed based on value. This was introduced as a requirement in many state constitutions such as the Arkansas Constitution of 1874.

After the Civil War, intangible property, including corporate stock, took on far greater importance. Taxing jurisdictions found it difficult to find and tax this sort of property. This trend led to the introduction of alternatives to the property tax, such as income and sales taxes, at the state level. Property taxes remained a major source of government revenue below the state level.

Various economic factors have led to taxpayer initiatives in various states to limit property tax. In 1978 Proposition 13 amended the California Constitution to limit aggregate property taxes to 1 percent of the “full cash value of property.” It also limited the increase in assessed value of real property to an inflation factor that was limited to 2 percent per year.

Arkansas has some of that type history, too. First, in the late 1960s and into the 1970s when the courts ruled that Arkansas assessors were not assessing property in accordance with constitutional law, counties were ordered to properly, and on a continual basis, assess real and personal property according to its market value. State legislation was enacted to reinforce constitutional law and to establish a uniform assessment procedure for counties to follow.

Since property had, for many years, been assessed below value the reappraisal of property was going to increase property taxes in Arkansas immensely in that first statewide, court-ordered reappraisal. That is when Arkansas Constitution, Amendment 59 was passed in the general election of 1980 to repeal in part and add to Arkansas Constitution, Article 16.

This amendment provided, among other things, a procedure for the adjustment of taxes after the reappraisal of property that we refer to as a millage adjustment or rollback. This procedure is used for the first year that reappraisal values are applied to the tax books to make sure the newly reassessed property values produce tax revenues no greater than 10 percent above the revenues received during the previous year.

The rollback procedure caused major millage reductions after the first court-ordered, state-wide reappraisal. In my home county, the county general millage was rolled back from the maximum 5 mills to 1.6 mills. The county road millage was reduced from the maximum 3 mills to 1 mill.

Secondly, Arkansas experienced a man by the name of Oscar Stilley, a former Fort Smith attorney, who repeatedly tried to get an initiative on the ballot that would completely abolish property taxes in Arkansas and make it almost impossible to increase any tax or fee without a vote of the people. It actually made the ballot for the 1998 General Election.

It was a scary time for any involved in government operations. But less than a month before the election, when polls showed the proposition headed for passage, the Arkansas Supreme Court struck the proposition from the ballot. The court said its supporters had used improper procedures, including forgery, to gather signatures. Stilley said they would be back for the 2000 election.

That’s when all concerned parties — the state, counties, municipalities, school districts and others — got busy. We knew we had to protect the property tax for local government and school operations. The state of Arkansas also realized that without property taxes more state revenues would have to be expended for schools and local governments, which meant increasing state taxes. But even those would have to be approved by the electorate under Stilley’s proposal.

The result of our collaboration is Amendment 79, which passed by a 60 percent to 32 percent margin. This amendment limited the increase in the assessed value of a taxpayer's real property after a countywide reappraisal and provided a property tax credit on homestead property. The credit is funded with a ½-cent state sales tax.

After the passage and implementation of Amendment 79, the past 20 years have been void of any serious attempt to abolish property taxes in Arkansas. Property tax is a crucial source of revenue for local government entities.

## **Administration**

The property tax system is administered at the county level. The federal government no longer levies a property tax. Neither does the state of Arkansas. They did in years past, but Amendment 47 was passed in the General Election of 1958 and succinctly says, "No ad-valorem tax shall be levied upon property by the State."

Real and personal property is defined in Title 26 [§ 26-1-101] as all tangible owned real estate that is fixed and not readily movable. This includes land and all structures and improvements made to that land, such as buildings, homes (including mobile homes) and barns.

As with real property, personal property is subject to ownership and is tangible. Previously in Arkansas, we paid personal property taxes on many more personal property items than we do now. Items of household furniture and furnishings, clothing, appliances and other personal property used within a home were exempted from personal property tax by Amendment 71, which was adopted in the 1992 General Election. Examples of taxable personal property today include: (1) vehicles; (2) boats; (3) motorcycles; (4) recreational vehicles; (5) livestock; and (6) farm machinery.

Each year, in accordance with § 26-26-1408, every Arkansas taxpayer must report taxable personal property to the county assessor for assessment of ad valorem taxes between Jan. 1 and May 31. While some personal property, such as vehicles, can be tracked because they must be registered, other personal property is difficult to track. The assessor in many cases must depend on the honesty of the taxpayer. That's right, to some degree, the personal property tax system in Arkansas works on the "honor system".

The assessed value of real property is calculated as 20 percent of the true market value in most cases. The exception is that agricultural land is assessed based on use value rather than market value.

Real property in Arkansas goes through regular reappraisal. Each county must reappraise all real property every three or five years, depending on growth between appraisals [Arkansas Code Annotated § 26-26-1902]. County-wide reappraisals of real property will be completed no later than July 1 of the year in which the county-wide reappraisal is scheduled to be completed.

Assessed value of personal property is 20 percent of the usual selling price at the time of the assessment. That is accomplished by assessors using industry tools/publications that track personal property values.

Cities, counties and school districts levy taxes on both real and personal property. Property taxes are based on mills. Most millage levies must be approved by voters before taxes can be levied and collected. However, the county quorum court may approve millage levies for county general and road funds up to the maximum allowed without a vote of the people. City governments may approve millage levies for the city general fund up to the maximum allowed without a vote of the people. But the electors of a county have the legal authority to go through the process of seeking a referendum to repeal any tax levy of the county [Arkansas Constitution, Amendment 7 and A.C.A. 14-14-914].

A mill equals one-thousandth of a dollar (.001). So, 10 mills = .01 and a 40-mill tax rate = .04. A 40-mill property tax means you pay \$40 for every \$1,000 of assessed value.

There is a maximum constitutional limit on the number of mills that can be levied by cities and counties. There is no maximum limit on the number of mills that can be levied by school districts. However, school districts must levy a minimum 25-mill tax, known as the Uniform Rate of Tax, on real and personal property in accordance with Amendment 74 [A.C.A. § 26-80-101] — the result of the Lakeview School District No. 52 v. Huckabee court case concerning school funding. All school district millage changes must be approved by voters.

- Counties can levy up to 21 mills of property tax. They include:
  - 5 mills — County general government [Arkansas Constitution, Article 16, § 9 and A.C.A. § 26-25-101]. Quorum court can levy without a vote of the electorate.
  - 5 mills — County bonded indebtedness [Arkansas Constitution, Amendment 62]. Requires a vote of the electorate.
  - 5 mills — County library maintenance and operation [Amendment 38 as amended by Amendments 72 & 89]. Requires a vote of the electorate to lower, raise or abolish the millage.

- 3 mills — County library capital improvements and construction [Amendment 38 as amended by Amendments 72 & 89]. Requires a vote of the electorate to lower, raise, or abolish the millage.
- 3 mills — County roads [Amendment 61 and A.C.A. § 26-79-101]. Quorum court can levy without a vote of the electorate.

**Note:** Amendment 61 was approved at the general election of 1982. Prior to the enactment of Amendment 61 the road millage was governed by Amendment 3, which required the road millage to be on the ballot at each general election in each county. If it was defeated, and it sometimes was, the counties defeating the issue did not have a county road tax the following year. An additional note concerning the county road millage in Arkansas is that the municipalities get a portion of the county road tax. In accordance with A.C.A. § 26-79-104 one-half of the road tax collected upon property within the corporate limits of any municipality is apportioned to them for use in making and repairing the streets and bridges in the municipality. A few municipalities receive more than one-half of the county road tax due to other specific legislation. That type of legislation can no longer be enacted by the State Legislature due to the passage of Amendment 14, which prohibits local or special acts.

- Cities can levy up to 20 mills of property tax, including:
  - 5 mills — City general government. [City Council]
  - 5 mills — City bonded indebtedness.
  - 5 mills — City library maintenance and operation.
  - 3 mills — City library capital improvements and construction.
  - 1 mill — Police pension.
  - 1 mill — Firemen pension.

**Note:** The City Council may increase or decrease the general millage. All of the other millage rates must be approved by voters.

### **Tax Process Procedure**

The number of mills levied by the city, county and school district will vary from county to county, and even from jurisdiction to jurisdiction within a county. It all depends on the number of mills approved either by voters or, in some cases, approved by the county and municipal governing bodies. Ultimately, the county quorum court levies all of the approved millage rates in a tax levy ordinance enacted in either November or December applicable for the following tax collection year.

How does the taxpayer end up with a certain dollar amount on their property tax statement? Here's a simplified procedure:

- The taxpayer reports personal property between Jan. 1 and May 31 each year and reports real property eligible for the homestead tax credit by Oct. 15 to the county assessor.
- The county assessor determines the market value of the property, as required by the Arkansas Constitution, and then multiplies the market value [use value for agricultural, timber and pastureland] by 20 percent to obtain the assessed value of the property. [See Adjustments to Assessed Value for further discussion of assessor duties.]
- The taxpayer may challenge their property tax assessment with the equalization board.
- The equalization board determines the equitability of assessments, meaning ascertaining that assessments are made using the same standards for everyone in the county. And they hear assessment appeals from taxpayers. Each year the equalization board meets beginning Aug. 1 through Oct. 1. In counties where the assessed value does not reflect true or market value, the board must continue meeting until all assessments are equalized and all requests for adjustment have been considered. However, the board is not to meet later than the third Monday in November [A.C.A. § 26-27-309]. Dates for hearing individual appeal cases are scheduled by the county clerk, or his or her designee, as secretary of the board upon request of a taxpayer/property owner. Requests for appeal must be filed with the secretary of the board by the third Monday in August [A.C.A. §§26-27-307 and 26-27-317]. If the property owner does not agree with the ruling of the equalization board, they may appeal the ruling — first to the County Court, which is the county judge, who has exclusive original jurisdiction in property tax matters [A.C.A. § 14-14-1105(b)(1)]. If the County Court ruling is not satisfactory to the property owner, they can then appeal to the Circuit Court, and then to the Arkansas Supreme Court.
- The county clerk or other county official appointed “preparer of the tax books” by the quorum court computes property taxes by multiplying the taxable assessed value by the total millage rate applicable to the taxpayer and provides this information to the county tax collector by Feb. 1 of each year [A.C.A. § 26-28-304]. Although originally the county clerk was the preparer of the tax books in Arkansas, current law authorizes the quorum court to appoint by ordinance either the county clerk, assessor, or county collector as the preparer of the tax books [A.C.A. § 26-28-302].
- The county tax collector is required to mail tax statements no later than July 1 each year, although most prepare and mail the statements much sooner. Current taxes from the previous year’s assessments are collected by the county collector each year from the first business day in March through Oct. 15 [A.C.A. § 26-35-501]. Failure to pay current property taxes in full by Oct. 15 results in a 10 percent penalty, plus costs, and collector’s fees added to the tax bill. Taxpayers have the option of paying current taxes in three installments: (1) First installment of at least 25 percent

due the third Monday in April; (2) Second installment of at least 25 percent due the third Monday in July; and (3) The final installment of 50 percent or the balance due Oct. 15. A different installment schedule applies to utilities and carriers. The county collector may authorize taxpayers, except utilities and carriers, the option to pay current real and personal property taxes in installments in any amount between the first business day in March and Oct. 15. The collector is required to turn over property tax collections to the county treasurer at a minimum one time each month. The collection settlement is due on the first of each month or within 10 days thereafter [A.C.A. §§ 21-6-310 and 26-39-201]. The county depository board is authorized to require county officials to settle with the county treasurer more frequently than monthly [A.C.A. § 19-8-106(a)(3)].

- After receiving the tax settlements from the collector, the county treasurer receipts current taxes to the Collector's Unapportioned Fund; delinquent real taxes to the Delinquent Real Estate Tax Fund; and delinquent personal taxes to the Delinquent Personal Tax Fund. The treasurer also receives delinquent real settlements from the State Land Commissioner for real estate that has been certified to the state of Arkansas for failure to pay taxes within one year following the date the taxes were due. These tax settlements are credited to the State Land Redemption/Sales Fund. The treasurer distributes property tax revenue to school districts and county and city governments based on the assessed value of property and millage rates in each jurisdiction. Only 90 percent of current taxes are distributed monthly with the balance distributed upon order of the county court approving the final settlement. The 10 percent held in the Unapportioned Fund is used to fund the office operations of the assessor and collector and settle up with the various tax entities at the end of the year [A.C.A. § 26-39-201(b)(2)]. Delinquent tax settlements are distributed in full each month.

### **Adjustments in the Form of Tax Relief**

Amendment 79, which I alluded to earlier, provides for property tax relief by limiting the increase in assessed value for tax purposes as a result of county-wide reappraisal and also delivers a homestead tax credit.

An increase in the assessed value of a homestead is limited to 5 percent for the year following a reappraisal. If the reappraisal results in an increase of more than 5 percent, assessments in subsequent years will be increased by a maximum 5 percent per year until the initial reappraisal assessment is reached. For real property, other than a homestead, assessment increases are capped at 10 percent per year and implemented in similar fashion. These limitations do not apply to newly discovered real property, new construction or increases resulting from substantial improvements to the property.

Starting with the 2019 assessment year collected in 2020, Arkansas taxpayers are eligible for an annual property tax credit up to \$375 against the ad valorem property tax on a homestead. The tax credit cannot exceed the total property tax on the homestead, which is the dwelling place used as the property owner's principal place of residence. Counties give the tax credit to eligible taxpayers and receive reimbursement from the Treasurer of State using the Property Tax Relief Trust Fund [A.C.A. § 26-26-310].

### **Conclusion**

The property tax system in Arkansas is administered by county officials. The Arkansas system is uncommon because property taxes are paid during the year following the year in which taxes are assessed. So, it takes about two years for property to be assessed, equalized, billed and paid. Because of the two-year period required to complete one tax cycle, county officials are continuously processing two different tax years at the same time.

If you're thinking about moving to a state without property taxes, don't waste your time looking. All 50 states have property taxes. But that's where the commonality ends. Tax rates can range from very low in one jurisdiction to astronomically high in another.

Arkansas is listed in the Top 10 Lowest Property Tax States in every survey I have reviewed. In one of the very latest surveys, the Arkansas property tax rate was ninth lowest. But the median real estate taxes paid was third lowest at \$743. Only two states had slightly lower median real estate taxes paid — Alabama and West Virginia.

Low tax rates and low home values make Arkansas an affordable state in terms of property taxes. Yet the property tax, even in Arkansas, is the most hated of all taxes.

The assessor and collector are on the front lines and the recipient of unpleasant taxpayers on occasion. My advice to county officials has always been to remain professional and treat even "mad folks" with as much courtesy and respect as possible. Know the law and the property tax process so you will be able to completely explain their tax bill. The Arkansas Constitution dictates that assessments be handled equally across the state, meaning that everyone and their property is treated the same. You don't do one thing for one person and something different for the next person. Most people want you to do the right thing — to abide by the laws you swore to uphold. Many times, a completely truthful explanation does the job. Thomas Jefferson



enunciated the basic principle of public service when he said, "When a man assumes a public trust, he should consider himself as public property."

I don't know that I would be quite as forthcoming as an incumbent assessor running for re-election in 2006. That assessor said, "Property owners pay more when they elect a good assessor. Asking you to vote for me is like asking a chicken to vote for Colonel Sanders, but somebody has to do it."

It seems nobody likes property taxes, but they've been around for centuries, and they're not going anywhere. We just need a better understanding of them and what they pay for, so we won't be afraid of them. The cartoon character Maxine is everyone's favorite cranky old lady. I saw a Hallmark Maxine greeting card recently where Maxine was saying, "I really scared the neighbors this year. I dressed up as property tax."

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## **FAQ Positions and Topics**

This section presents the FAQs (Frequently asked questions) in general and specifically for each elected position. Please refer to the Association of Arkansas Counties website for the complete answers to the questions presented. (<http://www.arcounties.org/faq/general-faqs>)

### **General FAQs:**

Do county elected officials and county employees receive retirement credit for a bonus or lump sum payment?

Who in county government is responsible for maintaining custody of the titles to county owned vehicles and equipment?

Is county government exempt from paying sales taxes?

Is a county liable for paying the normal fees to a county employee for serving as a juror or a prospective juror? If so, is the county allowed to deduct those fees from the regular salary of the county employee? Does the county have to bear all of the cost?

May a retiring county official or employee keep county health care insurance coverage upon and during retirement? Can they keep dependent coverage and is it mandatory for the county to allow retirees continued health care insurance coverage?

### **County Judge FAQs:**

Why do counties of Arkansas pay workers compensation premiums for volunteer firefighters since they are not employees of the county?

Is it correct that a county can only appropriate 90% of the anticipated revenues of the county each year and, if so, why? What happens to the 10% of the revenue that is not appropriated?

Can 911 revenues be used for anything other than equipment and salaries?

On what property can a county levy taxes? Is there a maximum amount of tax that a county can levy? Do the registered voters of a county have to approve the tax levy?

Who in county government is responsible for maintaining custody of the titles to county owned vehicles and equipment?

What does Arkansas law say about the establishment and use of the County Clerks Cost Fund?

What is the proper procedure for the establishment and use of the County Collectors Automation Fund?

Is it a requirement of law for a county to fund a county jail operation and what are some of the main sources of revenue for county jail operations?

Real property reappraisals are required to be conducted on a cyclical basis by county governments in Arkansas. What is the history of these reappraisals and how are the reappraisals paid for under current law?

What sources of revenue are produced by the Sheriff and identify any Special Revenue Funds that are used for the Sheriffs operation and how the revenue is generated for these special revenue funds?

How many years can a county legally go back to make a refund of property taxes paid in error?

Counties are sometimes told they cannot pay late charges or a penalty on overdue bills. Is it true that counties cannot pay penalties on bills that are past due?

The District Court system is one for which both counties and municipalities have financial responsibilities. What is the financial responsibility of county government as it concerns District Court?

What is a county's financial responsibility in the cost of the operation of a public defender's office?

Since County General funds are transferred to other county funds to supplement the operations of particular county funds, such as the Road and Bridge Fund is it legal to transfer Road and Bridge funds or money from other county funds to County General to supplement general operations?

Does the Quorum Court have any authority to add extra duties to the established duties of county constitutional officers and if so is there any limitation on that authority?

Can a quorum court set salaries of elected county officials as long as the salary is between the minimum and maximum set by the legislature even if they choose to decrease the salaries?

#### **County Clerk FAQs:**

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Is it a requirement of state law that the County Clerk and County Treasurer jointly reconcile the expenditures of the county each month?

#### **Circuit Clerk FAQs:**

Is a county liable for paying the normal fees to a county employee for serving as a juror or a prospective juror? If so, is the county allowed to deduct those fees from the regular salary of the county employee? Does the county have to bear all the cost?

What is the proper method for the establishment and operation of the County Recorders Cost Fund?

#### **Treasurers FAQs:**

What is excess commission and is the term actually found in Arkansas code? If so, what is the basis for calculating and distributing excess commission and who is responsible for seeing that the task is performed?

When a county receives unclaimed property proceeds from the Auditor of States office, which county fund should it be receipted to, how can the money be used, and does the county have any future liability for the unclaimed proceeds?

What funds are devoted to the Treasurers Automation Fund and what are considered legal expenditures from this fund?

What is the proper method for the establishment and operation of the County Recorders Cost Fund?

What does Arkansas law say about the establishment and use of the County Clerks Cost Fund?

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Is it a requirement of state law that the County Clerk and County Treasurer jointly reconcile the expenditures of the county each month?

#### **Assessor FAQs:**

On what property can a county levy taxes? Is there a maximum amount of tax that a county can levy? Do the registered voters of a county have to approve the tax levy?

Assessors in Arkansas receive funding from the end-of-the-year certified excess funds in the State Property Tax Relief Fund. How should these funds be handled at the county level? If the county level fund has a balance at the end of the year does it carry over?

Real property reappraisals are required to be conducted on a cyclical basis by county governments in Arkansas. What is the history of these reappraisals and how are the reappraisals paid for under current law?

**Sheriff FAQs:**

Can 911 revenues be used for anything other than equipment and salaries?

Is it a requirement of law for a county to fund a county jail operation and what are some of the main sources of revenue for county jail operations?

What sources of revenue are produced by the Sheriff? Identify any Special Revenue Funds that are used for the Sheriff's operation and how the revenue is generated for these special revenue funds?

**County Lines FAQs:**

How do I subscribe to County Lines Magazine?

How do I submit news and story ideas for County Lines, the AAC's quarterly magazine?

**Justice of the Peace FAQs:**

On what property can a county levy taxes? Is there a maximum amount of tax that a county can levy? Do the registered voters of a county have to approve the tax levy?

Is it correct that a county can only appropriate 90% of the anticipated revenues of the county each year and, if so, why? What happens to the 10% of the revenue that is not appropriated?

Can a Justice of the Peace be paid a monthly salary for serving the county as a district official? In addition to serving as Justice of the Peace, can a Justice be paid for serving as an employee of the county or for any other service performed for the position?

What does Arkansas law say about the establishment and use of the County Clerks Cost Fund?

What is the proper procedure for the establishment and use of the County Collectors automation Fund?

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Can a quorum court set salaries of elected county officials as long as the salary is between the minimum and maximum set by the legislature even if they choose to decrease the salaries?

**County Collectors FAQs:**

On what property can a county levy taxes? Is there a maximum amount of tax that a county can levy? Do the registered voters of a county have to approve the tax levy?

What is excess commission and is the term actually found in Arkansas code? If so, what is the basis for calculating and distributing excess commission and who is responsible for seeing that the task is performed?

What is the proper procedure for the establishment and use of the County Collectors Automation Fund?

How many years can a county legally go back to make a refund of property taxes paid in error?

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Do personal property taxes have to be collected at the same time that real estate taxes are collected? If so, are there any exceptions?

May a newspaper charge for other parts of the required publication of delinquent taxes, such as headers and etc., in addition to the legal fees of \$1.50 per tract per insertion for delinquent real estate and \$1.25 per name per insertion for delinquent personal?

## Chapter Seven- ATTORNEY GENERAL OPINIONS

The Attorney General's Office has created a body of opinions concerning the Freedom of Information Act ("FOIA") in application to county offices and public records of county officials. The subject of the request and the published opinion by number are provided below. These opinions may greatly assist the office in your county in making decisions concerning the FOIA. You may review and retrieve the entire opinion identified by going to the Attorney General's website: <http://www.arkansasag.gov/opinions/>. Additionally, this section provides other helpful Attorney General opinions regarding the elected position discussed in this manual.

### FOIA Generally

See Ops. Att'y Gen. 2003-006 (Application of ACA 25-19-108 to counties)

See Ops. Att'y Gen. 2005-298 (Response to absence of records)

See Ops. Att'y Gen. 2008-162 (Digital pictures of records)

See Ops. Att'y Gen. 99-134 (Records on county web site/fees)

See Ops. Att'y Gen. 2000-096 (Discussion of "meetings" under FOIA)

See Ops. Att'y Gen. 2001-382 (Location/Access to meetings)

See Ops. Att'y Gen. 2002-092 (Meetings)

### FOIA – Personnel Records Generally

See Ops. Att'y Gen. 1999-398 (Job applications and resumes)

See Ops. Att'y Gen. 2000-058 (Harassment complaints)

See Ops. Att'y Gen. 2000-201 (Internal affairs investigatory files)

See Ops. Att'y Gen. 2000-242 (Suspension letters)

See Ops. Att'y Gen. 2001-130 (Access)

See Ops. Att'y Gen. 2001-368 (Employee objections to release)

See Ops. Att'y Gen. 2002-043 (Payroll, status change, benefits package information)

See Ops. Att'y Gen. 2003-055 (Privacy interests)

See Ops. Att'y Gen. 2003-352 (Time cards)

See Ops. Att'y Gen. 99-168 (Notification to subject of records)

### Other Attorney General Opinions

Attorney General Opinion No. 2012-117: A custodian or requesting party seeking to ascertain whether a custodian's decision is consistent with the FOIA under ACA 25-19-105(c) must supply the AG with: (a) a copy of the request or what records specifically are being requested; (b) what records, if any, the custodian intends to release; and (c) what factual determinations went into both the custodian analysis or the requesting party's position. Frequently, the AG is not provided any of the foregoing necessary information and is unable to determine whether the decision of the custodian is consistent with the FOIA.

Similarly, under Attorney General Opinion No. 2012-113 the AG was unable to determine if the custodian was acting consistent with the FOIA because no party supplied the documents or information required as explained by Attorney General Opinion No. 2012-117, above. There was apparently blanket request to the former employer for the release of the entire employment file of a former employee. There was apparently a blanket response by the employee that the request was an unwarranted invasion of privacy. Parties seeking rulings by the AG under must supply the necessary information.

Under Attorney General Opinion No. 2012-115 the custodian supplied the proper documents and information and was deemed correct in releasing the interview questions submitted to applicants. However, the public has an interest in knowing the most qualified applicant was hired and therefore the scores of the person hired to the interview questions should be released and not redacted.

Attorney General Opinion No. 2012-123 the AG determined from submission of the necessary information that the custodian's decision to not release an employee evaluation that did not according to the custodian play a part in the subject termination.

Under Attorney General Opinion No. 2012-144 the AG agreed with the custodian's decision to release a transcription of two emails by a former employee, one to department heads and one to the employees generally, tendering his resignation. However, the Ag found that the redactions made by the custodian were inconsistent with the FOIA. Resignation letters are generally subject to release under the FOIA, however, the custodian may be able redact certain information as an unwarranted invasion of privacy. Because the two resignation letters were not provided and the release of information to the requesting

party was a transcription of the two emails, the AG could not determine that the custodian acted inconsistent with the FOIA. At a minimum the amount of information deleted shall be indicated on the released portion of the record, and if feasible at the place the redaction was made. The use of a transcription was inconsistent with these methods of disclosure and redaction under the FIOA.

Attorney General Opinion No. 2012-112: Upon request, it is the duty of the Attorney General to determine if a decision of a custodian is consistent with the FOIA. The AG says that records generated as part of an investigation may be considered employee evaluations or job performance records and may be exempt from release under the FOIA and may constitute an unwarranted invasion of privacy. The Attorney General's office and commentators have typically classified that personnel files typically include: employment applications, school transcripts, payroll-related documents such as re-classifications, promotions, demotions, transfer records, health and life insurance forms, performance evaluations, recommendation letters, etc. However, notwithstanding the exemption, ACA 25-19-105(c)(1) provides that employee evaluations may be subject to release upon final administrative resolution of any suspension or termination at which the records form a basis for the decision to suspend or terminate the employee and there is a compelling public interest. Compelling public interests involve violations of public trust or gross incompetence; the existence of a public controversy; and the employees position within the agency. Custodians may consistent with the FOIA clearly withhold employee evaluations of low level employees not suspended or terminated. However, in the context of law enforcement officers, the level or ranking of the employee has less weight and the public interest is greater. Whether or not an employee was directly or indirectly involved in an incident is relevant and may turn on whether there are allegations of a single event or multiple events. See also: Attorney General Opinions 2012-105.

Attorney General Opinions: 2012-111, 2012-110, 2011-156 and 2011-058: Reflect disclosure of the names of county employees or list of county employees is generally not protected. The AG has explained that the General Assembly has refrained from establishing a protection from releasing an employee's name on the basis of "harassment exception" or "increased risk of harm exception".

Attorney General Opinion No. 2012-143: The Workers Compensation Commission determines whether an employer qualifies as an "extra-hazardous" employer. ACA 11-10-314 provides an exemption for disclosure of the confidential data filed with the Workforce Services Commission concerning "extra-hazardous" employer status. This exception is located under a separate section of the Arkansas Code from the FOIA, Freedom of Information Act, ACA 25-19-101 et seq. The AG noted that in 2009 the General Assembly attempted to mandate that creation of any new record or public meeting exceptions to the FOIA after July 1, 2009 must explicitly state that the record or meeting is exempt from the FOIA, ACA 25-19-10 et seq. The exception to the FOIA under ACA 11-10-314 is clearly valid since it was adopted prior to July 1, 2009. However, the AG noted that attempts by the legislature to bind subsequent legislatures are called "entrenchment rules"; and that the validity of the 2009 entrenchment rule on the FOIA is questionable.

During the 2013 regular session Act 411 of 2013 explicitly amended the FOIA, Freedom of Information Act, ACA § 25-19-105(b)(13), concerning examination and copying of public records to protect the personal contact information of nonelected government employees. The amendment specifically exempts from disclosure home or mobile telephone numbers, personal email addresses, and home addresses of nonelected county or government employees. Act 411 seeks to protect privacy of nonelected employees and is effective August 16<sup>th</sup> as per ATTORNEY GENERAL OPINION NO. 2013-049.

Attorney General Opinion No. 2010-169: The Attorney General made clear that under the Freedom of Information Act a county assessor or public official may not charge citizens of Arkansas for access and copies to public records on a website maintained by the assessor and not charge county residents. The plan of the custodian to eliminate the fee based solely on whether the persons making the request are in-county residents is inconsistent with the Freedom of Information Act.

Attorney General Opinion No. 2013-050: The AG examined the law on treasurer's commissions on funds handled by the collector for suburban improvement districts; and concluded that the law does not envision the treasurer handling suburban improvement district assessments and does not provide for a treasurer's commission for those funds. Unless otherwise provided by ACA §§ 6-13-701, 6-17-908, 6-20-221, 14-90-913, 14-284-403 and 21-6-104, the county treasurers shall be required to collect as a treasurer's commission two percent (2%) on all funds coming into their hands as treasurers and to be paid out of the respective funds. However, Act 41 of 1941, codified as ACA 14-92-230, contemplates the collector to directly pay the SID and does not contemplate any handling by the treasurer.

Attorney General Opinion No. 2010-093: This opinion examines in great detail the interpretation of the school funding formula, Amendment 74 and ACA § 6-20-2305. The uniform rate of tax ("URT") is the 25-mill minimum property tax mandated under Amendment 74 and the absolute minimum rate of taxation that must be dedicated for school maintenance and operations ("M & O"). "Foundation funding" aid is to assure each district receives adequate funding. The foundation aid is calculated as: the difference between the foundation funding amount and the sum of 98% of the URT multiplied by the

property tax assessment of the district plus miscellaneous funds. The Attorney General noted that built into the calculation is the unrealistic assumption that a school district will in fact collect 98% of the amount imposed by the URT. If the actual collections fall short of the presumed collection rate, the state will be obligated to make up the shortfall in the constitutionally mandated funding amount. The Attorney General opined that: the state is entitled to recoup the excess; and the excess shall not be retained by the state but shall be distributed to the school districts. He says that while the Department of Education is obligated to distribute the excess to one or more schools, the Department is not necessarily obligated to return the excess to the district that generated the funds. The state is entitled to redistribute only that portion of net revenues in a given district that exceeds the foundation funding amount the state owes that district.

Attorney General Opinion No. 2012-107: What is a county official allowed to do under Act 569 of 2009 codified as § 14-14-111 [Electronic records]? Q2) Under § 14-14-111, can a county treasurer/collector download discs, install or move printers and reset passwords? Are there any limits to administrative rights under this Act? RESPONSE: Q1) The legislation generally allows a county official to exercise "administrative rights," certain of which are enumerated in the statute, in order to ensure the officials "complete access" to "public records" in his or her charge. With respect to the specific activities recited in your second question, a county treasurer/collector, as the official custodian of records, is authorized under the statute to engage in any activities, including those expressly recited, so long as doing so marks an exercise of "administrative rights" as defined.

Attorney General Opinion No. 2015-147: Are county treasurers authorized to commission the profits from prisoner commissary and telephone services that are deposited with them by the county sheriff for credit to the County Sheriff's Office Fund before being credited to the Communications Facility and Equipment Fund? Q2) Is the answer different if the Communications Facility and Equipment Fund is established on the books of the county, instead of on the books of the sheriff? RESPONSE: Q1) "Yes." Arkansas Code Annotated 21-6-302 is unambiguous in requiring, with certain exceptions that do not apply in this case, the 2% commission "on all funds coming into [the treasurers'] hands as treasurers." Q2) "No."

Attorney General Opinion No. 2016-048: Is it permissible for counties and cities to maintain district court automation funds? Q2) Who determines how these funds are used? Q3) Does their spending require approval of the quorum court or city council? RESPONSE: Q1) It is my opinion that the fund entitled "the district court automation fund" under Ark. Code Ann. 16-13-704(b)(3) cannot be maintained by both the county and the cities. Rather, because the district courts in Yell County are reportedly funded by both Yell County and the cities, these automation funds must be maintained by the cities in which the courts are located. Q2) In my opinion, the district court judges determine how the automation funds collected under this statute are used. Q3) City council "approval" is required in the sense that expenditures from a district court automation fund must be preceded by an appropriation adopted by the city council. The only time that the district court automation fund should be on the books of the county treasurer is when the county pays for the entire operation of district court.

Attorney General Opinion No. 2018-013: Can the salary of an elected county officer, including the treasurer, be reduced during his or her term? If not, when may the salary of an elected county position be reduced? Q2) If a county quorum court provides for "other compensation" for an elected county treasurer meant to cover pay for agreed-upon additional job duties that fall outside the normal responsibilities of an elected county treasurer, would that "other compensation" constitute salary? If the additional pay is considered salary, can that "other compensation" be reduced during his or her term? If not, when may that "other compensation" be reduced? RESPONSE: The answer to your first question is "no," in my opinion. The salary of an elected county officer may not be decreased during the officer's current term. Any decrease in the annual salary for an elected county office will not take effect until January 1 following the next general election for that office, when the incumbent's term-of-office expires. In response to your second question, whether the treasurer's "additional pay" is salary is a question of fact that is beyond the scope of an attorney general's opinion. But importantly, if this additional pay constitutes either salary or compensation, as construed under the relevant statute, then it also cannot be reduced during the treasurer's current term.



## **Chapter Eight - TREASURERS' COMMISSIONS AND FEES**

### **ACA 21-6-302 County treasurers.**

(a) The General Assembly finds that:

(1) Requiring the collection of commissions from funds under this section provides for fair and equitable treatment of the entities on the books of the county;

(2) The exceptions to the collection of commissions from funds are valid exceptions; and

(3) The exceptions to the collection of county treasurer commissions under this section are the only valid exceptions.

(b) Unless otherwise provided under subdivision (f)(1) of this section or subsection (g) of this section or under § 6-13-701, § 6-17-908, § 6-20-221, § 8-15-111, § 14-90-913, § 14-174-109, § 14-284-403, or § 19-5-1096, the county treasurers shall collect, as a treasurer's commission, two percent (2%) on all funds coming into their hands as treasurers and to be paid out of the respective funds.

(c) The commissions collected under this section shall be paid into the county treasury to the credit of the county treasurer's commission fund.

(d) The moneys collected by the treasurer as commissions shall be used by the treasurer to offset administrative costs.

(e) (1) The treasurer may set aside up to ten percent (10%) of the gross commissions collected annually to be credited to the county treasurer's automation fund to be used:

(A) To operate the office of the county treasurer;

(B) For administrative costs; and

(C) To purchase, maintain, and operate an automated accounting and record-keeping system.

(2) The acquisition and update of software for the automated accounting and record-keeping system are permitted uses of these funds.

(3) (A) Moneys deposited into the county treasurer's automation fund may accumulate and are not subject to the distribution of excess commission.

(B) The moneys shall be appropriated and expended for the uses designated in this section by the quorum court at the direction of the treasurer.

(f) (1) The treasurer shall not receive a commission for the handling of revolving loan, equalizing, and vocational education funds, proceeds of school bond sales, money collected from insurance or risk management funds on losses, federal or state grants, funds the county treasurer is not statutorily or by ordinance authorized to manage, and nonrevenue receipts.

(2) As used in this subsection, "nonrevenue receipts" means reimbursement of all or a part of a payment made by the county.

(g) (1) Except as provided in subdivision (g)(2) of this section, in the case of funds of a school district composed of area in two (2) or more counties, only the county treasurer of the county in which the district is administered shall be allowed a commission on the funds.

(2) If the school district has a district treasurer, the county treasurer collecting the school district funds and remitting them to the district treasurer is allowed a commission on the funds of that school district in accordance with §§ 6-13-701 and 6-20-221.

(h) Annual commissions not used for the operation of the county treasurer's office, except those commissions set aside in the county treasurer's automation fund, shall be prorated to the appropriate entities as excess commission.

### **ACA 6-20-221 County treasurer's commission on school funds - Exceptions.**

(a) Unless otherwise provided by law, the county treasurer shall be allowed a commission of two percent (2%) on all school funds paid into his hands, except on borrowed money, or the proceeds of the sale of bonds and all other funds on which the law shall not allow commission. In the case of a school district which is comprised of area in two (2) or more counties, only the county treasurer of the county in which the school district is administered shall be allowed a commission on the funds of the school district unless the school district has a district treasurer, in which case the treasurer of the county collecting the school district funds shall be allowed a commission on the funds of that school district.

(b) The county school funds shall pay such proportional part of the salaries and expenses of the county treasurer's office as the total county treasurer's commissions on all funds.

### **ACA 6-13-701 Compensation of treasurer - School districts which employ their own school district treasurer.**

The county treasurer shall receive as commission for handling the funds of such districts only one-fourth (1/4) of one per-cent of all funds passing through his hands on which county treasurers are authorized by law to charge commissions.

### **ACA 21-6-103 Illegal fees - Penalty.**

If any officer shall charge, demand, or receive any more or greater fees for his or her services than are allowed by law, or shall demand, charge, or receive any such fees without having performed the services for which the fees are charged, the officer for every offense shall forfeit to the injured party, or the party against whom the fees may be charged, the amount of fees illegally charged, and five dollars (\$5.00) for each item illegally demanded, charged, or received, with cost, and shall also be subject to an indictment for extortion.

### **ACA 14-90-913 Clerk's fees for extension of annual installments on municipal improvement districts - Fees of collector and treasurer.**

For services in disbursing the moneys, the district shall pay the County Treasurer one-eighth (1/8) of one percent of the amount received by him from the Collector, which he may withhold.

### **ACA 6-17-908 Commission for handling teacher's salary fund prohibited.**

No officer, agent, or other person shall charge or collect any commission for handling any part of the teacher's salary fund.

**ACA 14-284-403 Commission for handling Fire Protection Premium Funds prohibited**

A county treasurer shall not collect the treasurer's commission provided in § 21-6-302 on any of the premium tax moneys disbursed from the Fire Protection Premium Tax Fund.

**QUESTION:**

What revenues should a county treasurer commission? Are there exceptions to the rule and are there any revenues that the county treasurer cannot commission?

**ANSWER:**

The primary county treasurer commission code is Arkansas Code §21-6-302. The first section of that code says, "the county treasurers shall be required to collect, as a treasurer's commission, two percent (2%) on all funds coming into their hands as treasurers and to be paid out of the respective funds". *That is the general rule.* The 1999 amendment to this code that inserted the words "shall be required" was intended to cause every fund or entity to pay a proportionate share of the county treasurer's salary and office operation and not allow any fund or entity to pay a disproportionate share. Case law had already established the ruling of proportionate contributions. [Hodges v. Prairie County, 80 Ark. 62, 95 S.W. 988 (1906)] In a 2017 amendment to this code the General Assembly affirmed the ruling of the courts in 21-6-302(a).

Of course, there are always "exceptions" to the general rule. A.C.A. 21-6-302 lists some of those exceptions and some exceptions are found elsewhere. They are:

- School property tax collections where the school district has a district treasurer in which case the rate of commission is established at ¼ of 1%. [ACA 6-13-701]
- No commission is allowed on the Teacher Salary Fund – although most county treasurers no longer have a Teacher Salary Fund on their books. [ACA 6-17-908]
- The county treasurer, if treasurer of the school district, is allowed a 2% commission on school district property tax collections. If the school district is composed of area in two or more counties, only the county treasurer of the county in which the school is administered is allowed a commission – unless the school district has a district treasurer, in which case the county treasurer collecting the funds shall be allowed a commission of ¼ of 1% since the money flows directly from the collecting county to the school district treasurer. [ACA 6-20-221]

- The county treasurer is allowed only one-eighth percent (0.125%) for services in disbursing the moneys collected for district assessments under the Property Assessed Clean Energy Act. [ACA 8-15-111]
- The county treasurer is allowed a 1/8 of 1% commission on Municipal Improvement District moneys. [ACA 14-90-913]
- No commission is allowed on a sales tax levied under Title 14, Chapter 174, Subchapter 1 to be used for the sole use and benefit of a corporation organized under the Public Corporation for Economic Development Act. [ACA 14-174-109]
- No commission is allowed on Fire Protection Premium Funds, normally referred to as Act 833 of 1991 money. [ACA 14-284-403]
- No commission is allowed on the Property Reappraisal Funds received from the State of Arkansas. [ACA 19-5-1096]
- The county treasurer is not allowed a commission for the handling of revolving loan, equalizing, and vocational education funds, proceeds of bond sales, money collected from insurance or risk management funds on losses, federal or state grants, and all non-revenue receipts. Non-revenue receipts are defined in the law as reimbursement revenue – reimbursements of all or parts of a payment made by the county. [A.C.A. 21-6-302(f)(1)(2)]

There are other sources of revenue that a county treasurer should not commission – those for which there is no statutory authorization for the funds to go through the hands of the treasurer. *This is listed as a reason for not taking commission in 21-6-302(f)(1).* The precedent for this line of thinking comes from Attorney General Opinion No. 84-208. It was reiterated in AG Opinion No. 2013-050 concerning the treasurer commissioning Suburban Improvement District funds. If the law purports that the collecting officer should be remitting certain revenues to the State or some agency rather than the county treasurer there is a strong argument that the county treasurer should not commission the funds if they are remitted to the treasurer without statutory authorization for the funds to go through the hands of the treasurer.

Although the general rule is that "the county treasurers shall be required to collect, as a treasurer's commission, two percent on all funds coming into their hands as treasurers" – you can see there are several exceptions to the rule.



## **GLOSSARY OF TERMS**

These definitions are everyday terms that are used in the operation of the Treasurer's office. These terms are defined and referenced to the various statutes that describe them.

**BOND (of indebtedness)** - a certificate or evidence of a debt. Currently, the only type of long-term indebtedness available to a county.

**SHORT TERM FINANCING** - the ability for counties to incur debt and pay interest for acquiring, constructing, installing, and renting real property or tangible personal property having an expected useful life of more than one year. The period of financing must be five years or less. Amendment 78 and ACA 14-78-101 through 110

**BOND (fidelity)** - Surety coverage on all officers and employees who receipt for cash funds or disburse public funds of a county by virtue of their office or employment. (ACA 14-14-1201) Fidelity Bond Program (21-2-701 et. seq.)

**BONDS OF THE UNITED STATES** - Direct obligations of the United States of America; The obligation, principle and interest on which are fully guaranteed by the United States of America.

**WARRANT** - Authorized payment out of any money in the treasury in the following form: "No. \_\_\_\_\_ Treasurer of the County of \_\_\_\_\_ pay to \_\_\_\_\_, or order \_\_\_\_\_ dollars, out of any money in the treasury appropriated for county expenditures, (or express the particular fund out of which the warrant is to be paid). Given at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
\$ \_\_\_\_\_

A.B., Clerk"

**CANCELED WARRANT** - A warrant which has been voided, all warrants which have not been redeemed one year after date of issuance will be canceled.

**REDEEMED WARRANT** - A warrant that has been converted into cash.

**COUNTY COURT** - Has exclusive original jurisdiction in all matters relating to county taxes, ferries, paupers, vagrants, the apprenticeship of minors, the disbursement of money for county purposes, and in every other case that may be necessary to the internal improvement and local concerns of the respective counties. The County Judge is the Judge of the County Court. (Article 7, Section 28 of the Constitution of Arkansas)

**COUNTY DEPOSITORY BOARD** - Composed of County Judge, Treasurer, and Collector (or the Sheriff when acting as ex-officio Tax Collector) with the duties of designating depositories and supervising the depositing of all county funds, and all other public funds held by the County Treasurer (except funds of a school district) and designating depositories and supervising the depositing of funds

collected and held by the County Collector. (ACA 19-8-104 and 19-8-106)

**NON-REVENUE RECEIPTS** - Reimbursement of all or a part of a payment made by the county. ACA 21-6-302

**PUBLIC FUNDS** - Any and all funds that may come into the hands of all treasurers, collectors, commissioners, sheriffs, and clerks by reason of their official capacity. ACA 19-8-101 et. seq.

**PUBLIC MEETING** - All meetings of a county government governing body, board, committee, or any other entity created by, or subordinate to, a county government shall be open to the public except for the following exception. A meeting, or part of a meeting, which involves or affects the employment, appointment, promotion, demotion, disciplining, dismissal, or resignation of a county government official or employee need not be open to the public unless the local government officer or employee requests a public meeting. In any meeting required to be open to the public, the county quorum court, committee, board, or other entity shall adopt rules for conducting the meeting which afford citizens a reasonable opportunity to participate prior to the final decision. Appropriate minutes shall be kept of all public meetings and shall be made available to the public for inspection and copying. ACA 14-14-109

**PUBLIC RECORDS** - All records and other written materials in the possession of a local government shall be available for inspection and copying by any person during normal office hours. The exception to this is that personal records, medical records, and other records which relate to matters in which the right to individual privacy exceeds the merits of public disclosure shall not be available to the public unless the person they concern requests they be made public. ACA 14-14-110

TREASURER OF THE COUNTY OF \_\_\_\_\_, AR  
SECURITY AGREEMENT FOR FUNDS HELD IN DEPOSIT

This Agreement entered into as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_, Treasurer of the County of \_\_\_\_\_, ("**Depositor**") and ("**Institution**") \_\_\_\_\_, (City, State and Zip Code) \_\_\_\_\_

**WITNESSETH**

**WHEREAS**, the **Depositor** is the duly elected Treasurer of \_\_\_\_\_ ("County"), and, as such, custodian for various county and agency funds under the laws of the State of Arkansas; and

**WHEREAS**, pursuant to *Arkansas Code Annotated §19-8-101 et. seq.*, the **Institution** has been designated as a depository of public funds; and

**WHEREAS**, the **Institution** has agreed to secure the funds of the **Depositor** so deposited with it by conveying to the Depositor a security interest in eligible securities owned by the **Institution**, as allowed by 12 U.S.C. §90 and as provided in *Arkansas Code Annotated §19-8-203 and §23-47-203*, as amended;

**NOW, THEREFORE**, in consideration of the **Depositor** depositing certain of its funds with the **Institution**, and for other good and valuable consideration, it is agreed between the **Depositor** and the **Institution** as follows:

1. For the purpose of securing the funds deposited by the **Depositor** with the **Institution**, the **Institution** hereby agrees to assign, transfer, pledge and convey to the **Depositor** a perfected security interest in eligible securities owned by the **Institution**, as allowed by 12 U.S.C. §90 and as provided in *Arkansas Code Annotated §19-8-203 and §23-47-203*, as amended. The securities pledged as collateral hereunder ("Collateral") shall at all times have a market value, as determined by the **Depositor** equal to at least 105% (the "**Maintenance Percentage**") of the amount of funds of the **Depositor** so deposited with the **Institution**. Each pledge of securities as **Collateral** hereunder shall be made as follows:
  - a. In the case of any uncertificated securities issued by the United States and registered in the name of the **Institution** by the Federal Reserve Bank of St. Louis or any branch thereof, by delivery by the **Institution** to the **Depositor** of a written confirmation setting forth the securities pledged and also by the **Institution** identifying on its books and records as being pledged to the **Depositor** specific securities or a quantity of specific securities that constitute or are part of a fungible bulk of securities owned by the **Institution**;
  - b. In the case of any uncertificated securities issued by the United States and held for the account of the **Institution** by another financial intermediary (a bank or a securities broker-dealer), by delivery by the financial intermediary to the **Institution** and the **Depositor** of a written confirmation setting forth the securities pledged, together with identification by the **Institution** on its books and records of the pledge of such securities to the **Depositor** and identification by the financial intermediary on its books and records of the pledge of such securities to the **Depositor**;
  - c. In the case of any securities issued in the form of certificates and held in the **Institution's** possession, by delivery or transfer of such certificates (in bearer form or with instruments of transfer duly endorsed in blank) to the address or account of the **Depositor**; and

- d. In the case of any securities issued in the form of certificates and held in the possession of a financial intermediary (a bank or a securities broker-dealer) for the account of the **Institution**, by delivery or transfer of such certificates (in bearer form or with instruments of transfer duly endorsed in blank) to the address or account of the **Depositor** or by delivery by the financial intermediary to the **Depositor** and the Institution of a written confirmation setting forth the securities pledged together with identification by the Institution on its books and records of the pledge to the **Depositor** of the specific certificated securities held in the financial intermediary's possession and identification by the financial intermediary on its books and records of the pledge to the **Depositor** of the specific certificated securities held in its possession for the account of the **Institution**. Each written confirmation delivered to the **Depositor** pursuant to this Agreement shall set forth, at a minimum, (i) a description of the securities pledged as collateral hereunder, including the type, cusip number, maturity date, interest rate and par amount of each security pledged, (ii) the amount of funds of the **Depositor** on deposit as of the date of the confirmation, (iii) the market value of the securities pledged as collateral as of a recent date, and (iv) a statement that the confirmation has been delivered to the **Depositor** pursuant to the terms of this Agreement.
  - e. In the case of letters of credit, surety bonds and private deposit insurance policies, the issuer will be identified along with the coverage amount. The instrument will permit **Depositor** to make a claim directly on the issuer of the instrument in the event of default, financial failure or insolvency of the **Institution**. These instruments will be delivered to **Depositor** and risk of loss shall be with the **Institution** until the instrument is actually received by **Depositor**. **Institution** will also require the issuer of the Instrument to forward a copy of notification of coverage or insured limit to **Depositor**. As relevant to surety bonds, any surety bond pledged as collateral is irrevocable and absolute, and issuer of the surety bond cannot provide surety bonds for any one bank or financial institution in an amount that exceeds ten percent (10%) of the surety bond insurer's policyholders' surplus and contingency reserve, net of reinsurance.
  - f. Each written confirmation delivered to the **Depositor** pursuant to this **Agreement** shall set forth, at a minimum, (i) a description of the securities pledged as collateral hereunder, including the type, cusip number, maturity date, interest rate and par amount of each security pledged, (ii) the amount of funds of the **Depositor** on deposit with the Institution as of the date of the confirmation, (iii) the market value of the securities pledged as collateral as of a recent date, and (iv) a statement that the confirmation has been delivered to the **Depositor** pursuant to the terms of this **Agreement**. A current statement reflecting pledged Collateral will be provided to both Depositor and Pledgor by Custodian, the holder of Depositor's Collateral, on a monthly basis.
2. If at any time the ratio of the market value of the **Collateral** to the amount of funds on deposit is less than the **Maintenance Percentage**, then the **Institution** shall assign, pledge and convey a security interest and transfer to the **Depositor** securities of the type eligible to be pledged pursuant to *Arkansas Code Annotated §19-8-203 and §23-47-203*, as amended, and in such amount so that the ratio of the market value of such pledged securities to the amount of funds on deposit shall be at least equal to the **Maintenance Percentage**. Any additional pledge of **Collateral** hereunder shall be approved by an officer of the **Institution** duly authorized by resolutions of the Board of Directors to

approve substitutions of collateral, releases of collateral, and additional pledges of collateral under this Agreement ("**Duly Authorized Institution Officer**").

3. The **Institution** shall have the right, from time to time, after approval thereof by a **Duly Authorized Institution Officer**, to withdraw any of the pledged securities and substitute therefore other pledged securities of the same type and of like amount of the securities withdrawn upon compliance with the requirements of paragraph 1 hereof and delivery to the **Depositor** of written notice of such substitution, specifically identifying the securities withdrawn and the securities substituted therefore.
4. Any pledge hereunder shall be a continuing pledge and shall secure not only such deposits that are held by the **Institution** at the time of the transfer of the **Collateral** to the **Depositor** hereunder, but also any and all subsequent deposits of funds with the **Institution** by the **Depositor**, notwithstanding the account or accounts in which such funds may be held or identified by the **Institution**.
5. The pledge of **Collateral** by the **Institution** to secure the deposits of the **Depositor** shall be in addition to, and shall in no way eliminate or diminish, any insurance coverage to which the **Depositor** may be entitled under the rules and regulations of the Federal Deposit Insurance Corporation or any private insurance carried by the **Institution** for the purpose of protecting the claims and rights of its depositors.
6. It is agreed that when the **Institution** shall have paid out and accounted for all the funds of the **Depositor** so deposited with the **Institution**, then and in that event any and all securities pledged as **Collateral** under this Agreement shall be released from the security interest created hereunder, and the **Institution** and the **Depositor** shall take whatever actions may be necessary to cause a transfer of such securities to the **Institution** free and clear of any liens created hereunder.
7. The **Institution** hereby represents to the **Depositor** that (i) it is a national bank, state bank, out-of-state bank with Certificate of Authority under *Arkansas Code Annotated §23-48-1001* or savings and loan association, duly organized and validly existing under the laws of the United States or the State of Arkansas, (ii) it has, or will have at the time of delivery of any securities as **Collateral** under this Agreement, the right, power and authority to grant a security interest therein with priority over any other rights or interests therein, (iii) the execution and delivery of this Agreement and the pledge of securities as **Collateral** hereunder has been approved by its Board of Directors, and (iv) the execution and delivery of this Agreement and the pledge of securities as **Collateral** hereunder will not violate or be in conflict with the Articles of Association or By-laws of the **Institution**, any agreement or instrument to which the **Institution** may be a party, any rule, regulation or order of any banking regulator applicable to the **Institution**, or any internal policy of the **Institution** adopted by its Board of Directors.
8. All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
9. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.
10. In any action or proceeding which a party may be required to prosecute to enforce its respective rights hereunder, the unsuccessful party therein agrees to pay all reasonable costs incurred by the prevailing party therein, including reasonable attorney's fees, to be fixed by the court, and said costs and attorney's fees shall be made a part of the judgment of said action.

- 11. This Agreement shall be governed by and construed in accordance with the laws of the State of Arkansas and it supersedes any and all prior agreements, arrangements or understandings with respect to the subject matter hereof.
- 12. No provision of this Agreement may be waived except by a writing signed by the party to be bound thereby and any waiver of any nature shall not be construed to act as a waiver of subsequent acts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

**INSTITUTION:**

\_\_\_\_\_  
Bank Name

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Address for Notices:

\_\_\_\_\_

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**DEPOSITOR:**

\_\_\_\_\_  
Treasurer Name

TREASURER OF \_\_\_\_\_

County

Address for Notices:

\_\_\_\_\_

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
Signature



**TREASURER OF THE COUNTY OF \_\_\_\_\_, AR**  
**CUSTODIAL SERVICES AGREEMENT**

This CUSTODIAL SERVICES AGREEMENT (“Agreement”) is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between \_\_\_\_\_ (“Depositor”) with its principal office at \_\_\_\_\_ and \_\_\_\_\_ (“Institution”) with its principal office at \_\_\_\_\_ and \_\_\_\_\_ (“Custodian”) with its principal office at \_\_\_\_\_.

**WITNESSETH**

**WHEREAS**, the **Depositor** has agreed to deposit funds with the **Institution** pursuant to the terms and provisions of that certain Security Agreement for Funds Held in Deposit (“**Security Agreement**”) by and between the **Depositor** and the **Institution** dated as of \_\_\_\_\_; and

**WHEREAS**, pursuant to the terms and provisions of the **Security Agreement**, the **Institution** has agreed to assign, transfer, pledge and convey to the **Depositor** a perfected security interest in certain eligible securities owned by the **Institution** (the “**Collateral**”); and

**WHEREAS**, in order to perfect the **Depositor's** security interest in the **Collateral**, the **Custodian**, as agent for the **Depositor**, will accept from the **Institution**, take possession of and hold such **Collateral** solely for the benefit of the **Depositor**.

**NOW, THEREFORE**, in consideration of the mutual covenants and premises herein contained, the parties do hereby agree as follows:

1. The **Custodian** hereby accepts employment as the **Depositor's** custodian and depository pursuant to the terms of this **Agreement**.
2. The **Custodian** shall accept and retain as **Custodian** solely for the benefit of the **Depositor** all securities tendered by the **Institution** as **Collateral** for its obligations under the **Security Agreement**. For the purposes of this **Agreement**, the term “securities” shall have the same meaning as set forth in the **Security Agreement**. Upon receipt of **Collateral** from the **Institution** for the benefit of the **Depositor**, the **Custodian** shall (i) immediately notify the **Depositor**, by telephone or otherwise, of the **Collateral** pledged, (ii) issue a written receipt to the **Institution** evidencing **Custodian's** receipt of the **Collateral**, and (iii) within three business days issue and provide delivery to **Depositor** written confirmation evidencing **Institution** has pledged and **Custodian** has received **Collateral**.
3. The **Custodian** shall identify on its books and records as being pledged to the **Depositor** specific securities or a quantity of specific securities received by it for, or for the account of, the **Depositor**. The **Custodian** shall have no power or authority to transfer, assign, hypothecate, pledge or otherwise dispose of any such securities, except pursuant to instructions from the **Depositor** and pursuant to the terms of this **Agreement**.
4. If at any time the ratio of the market value of the **Collateral** to the amount of funds on deposit is less than the Maintenance Percentage, then the **Institution** shall assign, pledge and convey a security interest and transfer to the **Depositor** securities of the type eligible to be pledged pursuant to *Arkansas Code Annotated §19-8-203 and §23-47-203*, as amended, and in such amount so that the ratio of the market value of such pledged securities to the amount of funds on deposit shall be at least equal to the Maintenance Percentage. Failure by **Institution** to provide securities of the type eligible to be pledged pursuant to *Arkansas Code Annotated §19-8-203 and §23-47-203*, as amended, in such amount so that the ratio of the market value of such pledged securities to the amount of funds on deposit is at least equal to the Maintenance Percentage, shall at the discretion of the Treasurer of \_\_\_\_\_ County, AR make all funds of the **Depositor** held by the **Institution** subject to immediate withdrawal without penalty and with interest being due and payable to the date of withdrawal.
5. The **Custodian** shall, on the first business day following receipt by the **Custodian** of prior written notice, allow

the **Institution** to withdraw any of the securities constituting the **Collateral**, if the **Institution** shall simultaneously deliver to the **Custodian** as additional **Collateral** securities of the same type and having at least the same market value as the securities withdrawn.

6. The **Custodian** is hereby authorized and directed to promptly distribute to the **Institution** any cash received by the **Custodian** as payment of accrued interest on any of the securities constituting the **Collateral**.

7. Except as specifically provided in the foregoing paragraphs 5 and 6, the **Custodian** will not release or transfer to the **Institution** any securities constituting the **Collateral** without prior written instructions from the **Depositor**, except that the **Custodian** may elect to release or transfer to the **Institution** securities constituting the **Collateral** upon receipt of verbal instructions from the **Depositor**, if (i) the verbal instructions are electronically recorded and the **Custodian** has obtained independent and separate confirmation of the verbal instructions from an authorized officer of the **Depositor**, (ii) the **Custodian** provides immediate written confirmation of the verbal instructions to the **Depositor** and (iii) the **Depositor** provides immediate written confirmation of the verbal instructions to the **Custodian**. The **Depositor** and the **Custodian** agree that in the case of any conflict between written and verbal instructions, the written instructions will be binding.

8. The **Custodian** agrees to provide to the **Depositor** a monthly statement of holdings reflecting the securities pledged by the **Institution**. In addition, the **Institution** agrees to provide to the **Custodian** current market price valuations of the securities constituting the **Collateral**, as may be required or requested by the **Depositor**.

9. In the absence of bad faith on the part of the **Custodian**, the **Custodian** shall be permitted to rely upon the authenticity of, and the truth of the statements and the accuracy of the opinions expressed in, and will be protected in acting upon, any document believed by the **Custodian** to be genuine and to have been signed, affixed or presented by the proper party or parties. The **Custodian** shall not be liable with respect to any action taken or omitted to be taken by it in accordance with any instruction or request of the **Depositor**. In addition, the **Custodian** shall not be liable for any error of judgment made in good faith by an officer of this **Custodian**, unless it shall be proved that the **Custodian** was grossly negligent in ascertaining the pertinent facts. In the event the **Custodian** receives substantially contemporaneously contrary written instructions from the **Depositor** and the **Institution**, then the **Custodian** may, at its election and without liability to either the **Depositor** or the **Institution**, interplead the securities constituting the **Collateral** in a court of competent jurisdiction, and the **Depositor's** and the **Institution's** sole recourse shall be against each other and the securities constituting the **Collateral** so interpled.

10. This **Agreement** may be amended at any time by written agreement between the **Depositor** and the **Custodian**, with prior written notice to the **Institution**.

11. This **Agreement** shall be subject to and construed in accordance with the laws of the State of Arkansas.

12. This **Agreement** may be simultaneously executed in two or more counterparts, each of which shall be deemed to be an original.

13. Notices and other writings shall be delivered or mailed postage prepaid to the parties at the addresses set forth on the signature page hereof.

**IN WITNESS WHEREOF**, the parties hereto, each acting through its respective duly authorized representative, have caused this **Agreement** to be signed in their name and delivered as of the date first above written.

**DEPOSITOR:**

\_\_\_\_\_

TREASURER OF THE COUNTY OF \_\_\_\_\_, AR

Address for Notices:

\_\_\_\_\_  
\_\_\_\_\_, AR \_\_\_\_\_

\_\_\_\_\_  
Signature

**CUSTODIAN:**

\_\_\_\_\_  
Address for Notices:

\_\_\_\_\_  
By:

\_\_\_\_\_  
Title:

**INSTITUTION:**

\_\_\_\_\_  
Address for Notices:

\_\_\_\_\_  
By:

\_\_\_\_\_  
Title:

\_\_\_\_\_

CERTIFICATE OF CORPORATE RESOLUTIONS

I, \_\_\_\_\_, the duly elected, qualified and acting Secretary of \_\_\_\_\_, ("**Institution**"), do hereby certify that set forth below is a true, correct and complete copy of resolutions adopted by the Board of Directors or Loan Committee of the **Institution** at a meeting duly convened and held, pursuant to notice properly given or waivers of notice properly made pursuant to applicable banking laws, on \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_, at (**Time**), \_\_\_ at which meeting a quorum for the transaction of business was at all times present and acting, and that said resolutions, approvals and authorizations have not been amended or revoked and are now in full force and effect:

**RESOLVED**, that the Security Agreement for Funds Held in Deposit ("**Agreement**") by and between (**Institution**) and \_\_\_\_\_ ("**Depositor**"), dated as of \_\_\_\_\_, is hereby approved and the President and the Secretary of the **Institution** be, and they hereby are, authorized, empowered and directed, for and in the name of and on behalf of the **Institution**, to execute such **Agreement** and deliver it to **Depositor**; and

**FURTHER RESOLVED**, that during the term of the **Agreement** the **Institution** is hereby authorized and empowered to pledge and transfer as collateral thereunder such securities of the **Institution** as determined by a Duly Authorized Institution Officer; and

**FURTHER RESOLVED**, that the Secretary of the **Institution** be, and he hereby is, authorized, empowered and directed to maintain the **Agreement** as an official record of the **Institution** until its revocation, rescission or termination; and

**FURTHER RESOLVED**, that the officers of the **Institution** be, and they hereby are, authorized, empowered and directed to take such actions and to execute and deliver such documents and instruments as they may deem necessary to satisfy the obligations and covenants of the **Institution** under such **Agreement** and to carry out the intents, purposes and objects of these resolutions; and

**FURTHER RESOLVED**, that the officers of the **Institution** listed below are hereby designated as the Duly Authorized Institution Officers under the **Agreement**, with full power and authority to determine the initial securities to be pledged as collateral thereunder and to approve all substitutions of collateral, releases of collateral, and additional pledges of collateral thereunder, and if needed, to designate representatives of the **Institution** to transact business with the **Depositor**.

DESIGNATED DULY AUTHORIZED INSTITUTION OFFICERS

\_\_\_\_\_  
NAME/TITLE  
\_\_\_\_\_  
NAME/TITLE  
\_\_\_\_\_  
NAME/TITLE

\_\_\_\_\_  
NAME/TITLE  
\_\_\_\_\_  
NAME/TITLE  
\_\_\_\_\_  
NAME/TITLE

**WITNESS** my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Secretary

# Collateralizing Public Deposits

County officials in Arkansas are required to collateralize the deposit of public funds for the amounts not fully insured directly by the United States – as in Federal Deposit Insurance through the FDIC. Each official is required to enter into any supplemental agreements with the depository institution that would perfect the security. [Arkansas Code § 19-8-107(c)(1)(A)(B)(2)(A)(B)]

The safety of public funds should be the foremost objective in public funds management. Collateralization of public deposits through the pledging of securities owned by the financial institution or other instruments such as surety bonds or an irrevocable letter of credit issued by a Federal Home Loan Bank is an important safeguard for such deposits. For counties in Arkansas it is not just an important safeguard – it is a requirement of law!

**What can a county official accept as collateral for the public funds he or she has on deposit with an Arkansas financial institution?** Identical eligible security for deposits is found both in Title 19 [Public Finance] and in Title 23, Chapter 47 [Banking Code]. Here is the list from §19-8-203(a):

**(1)** The pledge or escrow of the assets of the bank consisting of any investment in which a state bank may invest pursuant to § 23-47-401;

**(2)** A surety bond issued by an insurance company licensed under the laws of the State of Arkansas and either:

**(A)** Rated "A" or better by any one (1) or more of the following rating agencies:

**(i)** A.M. Best Company, Inc.;

**(ii)** Standard & Poor's Insurance Rating Service;

**(iii)** Moody's Investors Service, Inc.; or

**(iv)** Duff & Phelps Credit Rating Co.; or

**(B)** Listed on the then-current United States Department of the Treasury Listing of Approved Sureties;

**(3)** Private deposit insurance issued by an insurance company licensed under the laws of the State of Arkansas and either:

**(A)** Rated "A" or better by any one (1) or more of the following rating agencies:

**(i)** A.M. Best Company, Inc.;

**(ii)** Standard & Poor's Insurance Rating Service;

**(iii)** Moody's Investors Service, Inc.; or

**(iv)** Duff & Phelps Credit Rating Co.; or

**(B)** Listed on the then-current United States Department of the Treasury Listing of Approved Sureties;

or

**(4) An irrevocable standby letter of credit issued by a Federal Home Loan Bank.**

You, as the public funds depositor, get to make the decision on whether or not to accept the security offered as collateral. You have the discretion, by law, to say yes or no regarding the suitability of the collateral [§ 19-8-203(a) and 23-47-203(c)(1)]. You may want to say “no” to certain securities offered as collateral if the market value tends to be volatile.

A county should establish adequate and efficient administrative systems to monitor pledged collateral. Monitoring informs you of under collateralization, which may threaten the safety of your deposits. It can also reveal over collateralization which may increase the cost of banking services.

A county official should make every effort to comply with state and federal requirements in order to ensure that their security interests in collateral pledged to secure deposits are enforceable against the receiver of a failed financial institution. Federal law provides that a depositor's security agreement, which tends to diminish or defeat the interest of the FDIC in an asset acquired by it as receiver of an insured depository, shall not be valid against the FDIC unless the agreement:

- Is in writing;
- Was approved by the board of directors of the depository or its loan committee; and
- Has been, continuously, from the time of its execution, an official record of the depository institution.

A county official should have all pledged collateral held at an independent third-party institution outside the holding company of their bank, and evidenced by a written agreement in order to satisfy the Uniform Commercial Code (UCC) requirement for control. The UCC states that the depositor does not have a perfected interest in a security unless the depositor controls it. Control means that swaps, sales, and transfers cannot occur without the depositor's written approval.

- The value of the pledged collateral should be marked to market monthly, at a minimum, or more frequently depending on the volatility of the collateral pledged. Arkansas law requires that the aggregate market value of security pledged or the face amount of the surety bond, private deposit insurance or letter of credit securing the deposits of public funds “must be equal to or exceed the amount of the deposit to be secured.”
- Substitutions of collateral should meet the requirements of the collateral agreement, be approved by the county in writing prior to release, and the collateral should not be released until the replacement collateral has been received.
- The county should require reporting directly from the custodian of the collateral – the third-party institution. The custodian agreement should be a three-party agreement between the county [depositor], the bank, and the third-party institution.
- Reporting by the third party institution should be, at a minimum, monthly.

Counties that use surety bonds or private deposit insurance in lieu of collateral must limit the insurers to those of the highest credit quality, rated “A” or better, by a nationally recognized insurance rating agency [§ 19-8-203(a)(2)(3)].

A county should thoroughly review the terms and conditions of any letter of credit issued as security. Please note that an Arkansas county may only accept an “irrevocable letter of credit issued by a Federal Home Loan Bank”.

It is extremely important for a county official to create an enforceable perfected security interest in all collateral for their public deposits. When a banking institution fails and goes into receivership the FDIC comes into settle on the assets of a bank. FDIC makes the decision on what is perfected security – not the county as the depositor and not the bank that pledged the security. If everything is not in accordance with

state and federal laws to create an enforceable perfected security the FDIC may void any agreements and leave the county with only the right to share with other creditors in the pro rata distribution of the assets of a failed institution for the amount of deposits that exceed the FDIC coverage. So, it is extremely important to collateralize correctly – remembering that the safety of public funds is a top objective of a county official.

To perfect security a county official should have all agreements in writing and the required consummated agreements include:

- Depository Agreement [19-8-107];
- Security Agreement [FDIC regulations];
- Custodial Services Agreement [Uniform Commercial Code]; and
- Certificate of Corporate Resolutions (approval by the board of directors of the depository or its loan committee) [FDIC regulations]

**Notes:**

- It should be noted, that as a result of an Arkansas court case during the administration of State Treasurer Jimmie Lou Fisher [North Arkansas Medical Center v. Barrett 1992], the FDIC issued a policy statement that was then officially enacted by Section 317 of the Riegle Community Development and Regulatory Improvement Act of 1994 [Public Law 103-325] that liberalized the contemporaneous execution requirement. FDIC regulations now say that 'an agreement to provide for the lawful collateralization of deposits of a Federal, State, or local governmental entity shall not be deemed to be invalid solely because the agreement was not executed contemporaneously with the acquisition of the collateral or with any changes in the collateral made in accordance with such agreement.'
- Another note to the required agreements for perfected security is that the FDIC does not require every transaction to be reviewed and approved by the board of directors. The board may fulfill this function by setting parameters and authorizing a particular officer or officers to carry out its wishes in the Certificate of Corporate Resolutions. The officer would be performing ministerial acts on behalf of the board [FDIC Interpretive Letters].
- One more note – In securing collateral for your public deposits not covered by FDIC insurance, keep in mind that in accordance with Section 330.15 of the FDIC's regulations [12 C.F.R. 330.15] the official custodian of the funds – rather than the public unit itself – is insured as the depositor. So it is doubtful that the FDIC would recognize any collateral securing funds that you are not the official custodian of.

## Deposit Insurance for Public Funds

FDIC [Federal Deposit Insurance Corporation] has provided deposit insurance since 1933 – established on the heels of the Great Depression. The FDIC is backed by the full faith and credit of the United State government.

FDIC deposit insurance coverage depends on two things: (1) whether your chosen financial products is a deposit product; and (2) whether you bank is FDIC-insured.

The FDIC covers:

- Checking accounts
- Negotiable Order of Withdrawal (NOW) accounts
- Savings accounts
- Money Market Deposit Accounts (MMDAs)
- Time deposits such as certificates of deposit (CDs)
- Cashier's checks, money orders, and other official items issued by a bank

The FDIC does not cover:

- Stock investments
- Bond investments
- Mutual funds
- Life insurance policies
- Annuities
- Municipal securities
- Safe deposit boxes or their contents
- U.S. Treasury bill, bonds or notes

The standard FDIC insurance amounts is \$250,000 per depositor, per insured bank, for each account ownership category.

Coverage is a little different for government accounts. The category known as government accounts (also called Public Unit accounts) includes deposit accounts owned by:

- The United States, including federal agencies
- Any state, county, municipality (or a political subdivision of any state, county or municipality), the District of Columbia, Puerto Rico and other government possessions and territories
- An Indian tribe

Insurance coverage of a government accounts is unique in that the insurance coverage extends to the official custodian of the deposits belonging to the government public unit, rather than to the government unit itself.

Accounts held by an official custodian of a government unit will be insured as follows:

### **In-state accounts:**

- Up to \$250,000 for the combined amount of all time and savings accounts [including NOW accounts]



- Up to \$250,000 for the combined amount of all interest-bearing and noninterest bearing demand deposit accounts

**Out-of-state accounts:**

- Up to \$250,000 for the combined amount of all deposit accounts

**Governance:**

Section 330.15 of the FDIC's regulations [12 C.F.R. 330-15] governs the insurance coverage of public unit accounts. For deposit insurance purposes, the term "public unit" includes a state, county, municipality, or any "political subdivision" of the public unit. The term "political subdivision" also includes any subdivision or principal department of a public unit if the subdivision or department meets the following tests:

- The creation of the subdivision or department has been expressly authorized by the law of such public unit;
- Some functions of government have been delegated to the subdivision or department by such law; and
- The subdivision or department is empowered to exercise exclusive control over funds for its exclusive use.

Under section 330-15, the "official custodian" of the funds belonging to the public unit – rather than the public unit itself – is insured as the depositor. An official custodian is an officer, employee, or agent of a public unit having official custody of public funds and lawfully depositing the funds in an insured institution. In order to qualify as an official custodian, a person must have plenary authority – including control – over the funds. Control of public funds includes possession as well as the authority to establish accounts in insured depository institutions and to make deposits, withdrawals and disbursements.

**HIS COUNTY, ARKANSAS  
BANK DEPOSITS SCHEDULE  
JANUARY 31, 2019**

**SECURITY BANK  
BANK**

ACCOUNT		DEMAND DEPOSIT	TIME DEPOSITS		TOTAL TIME DEPOSITS	TOTAL DEPOSITS
TYPE	ACCOUNT #		MONEY MKT	CERTIFICATES		
CHECKING	678910	220,150.75	140,000.25		140,000.25	220,150.75
MONEY MKT	5075			125,000.00	125,000.00	125,000.00
CD	2175					
		220,150.75	140,000.25	125,000.00	265,000.25	485,151.00

TO  
COVERAGE  
SCHEDULE  
  
1

TO  
COVERAGE  
SCHEDULE  
  
1

TO  
COVERAGE  
SCHEDULE  
  
TO  
COVERAGE  
  
1

1 - Per Bank Balance, NOT Per Book

**THIS COUNTY, ARKANSAS  
BANK SECURITY FORM  
JANUARY 31, 2019**

FIRST NATIONAL BANK

Security Description	Third Party Custodian	Confirmation Number	CUSIP Number	Pledge Date	Release Date	Pledge Amount	MARKET VALUE
							Balance
FNMA POOL 25557	Fed. Home Loan Bk.	64048	31359LDN4	12/15/2007		480,000.00	390,000.00
Treasury Note 4.25%	Fed. Home Loan Bk.	53045	31371LB82	01/03/2008		450,000.00	450,000.00
FHLB 4.6%	Fed. Home Loan Bk.	7821D	31339YKN40	01/10/2008		325,000.00	280,000.00
<b>TOTAL</b>						<b>1,255,000.00</b>	<b>1,120,000.00</b>

4

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TO COVERAGE SCHEDULE
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NOTES:

1. Maintain a separate form for each bank.
2. Calculate MARKET VALUE balance at end of month (or any other desired date).
3. Post balance amount above to the "Coverage Schedule" form at end of month and at other desired dates, so that total coverage can be determined.
4. ALL data needs to be included for pledged and released securities. This data comes from "safekeeping receipts", FDIC or other bank documents.
5. If you are using a bank that has a separate charter from the main bank, then you would complete a separate form for that bank

**THIS COUNTY, ARKANSAS  
 COVERAGE SCHEDULE  
 JANUARY 31, 2019**

BANK	DEPOSITS			COVERAGE			OVER (UNDER	
	DEMAND	TIME	TOTAL	FDIC INSURANCE		MARKET VALUE OF PLEGDED SECURITIES		TOTAL COVERAGE
				DEMAND	TIME			
First National Bank	629,130.02	532,670.98	1,161,801.00	100,000.00	100,000.00	1,120,000.00	158,199.00	
Security Bank	220,150.75	265,000.25	485,151.00	100,000.00	100,000.00	359,600.00	74,449.00	

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**TOTAL ALL**                      849,280.77    797,671.23    1,646,952.00    200,000.00    200,000.00    1,479,600.00    1,879,600.00  
232,648.00

XXXX

From "BANK DEPOSITS SCHEDULE"	Per FDIC regulations	From "BANK SECURITY FORM"	TOTAL DEPOSITS LESS TOTAL COVERAGE
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XXXX Over coverage from one bank will not cover "pledged security" shortages in another bank.