

School Finance Hot Topics – July 9, 2014

Direct Deposit/Payroll Debit Cards

It is the opinion of the WVDE Office of School Finance that is NOT permissible to require all employees to either utilize direct deposit or a payroll debit card. This opinion is based on the sections of WV Code highlighted below:

§21-5-3. Payment of wages by employers other than railroads; assignments of wages.

(a) Every person, firm or corporation doing business in this state, except railroad companies as provided in section one of this article, shall settle with its employees at least once in every two weeks, unless otherwise provided by special agreement, and pay them the wages due, less authorized deductions and authorized wage assignments, for their work or services.

(b) Payment required in subsection (a) of this section shall be made:

(1) In lawful money of the United States;

(2) By cash order as described and required in section four of this article;

(3) By deposit or electronic transfer of immediately available funds into an employee's payroll card account in a federally insured depository institution. The term "payroll card account" means an account in a federally insured depository institution that is directly or indirectly established through an employer and to which electronic fund transfers of the employee's wages, salary, commissions or other compensation are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution or another person. "Payroll card" means a card, code or combination thereof or other means of access to an employee's payroll card account, by which the employee may initiate electronic fund transfers or use a payroll card to make purchases or payments.

Payment of employee compensation by means of a payroll card must be agreed upon in writing by both the person, firm or corporation paying the compensation and the person being compensated.

(4) By any method of depositing immediately available funds in an employee's demand or time account in a bank, credit union or savings and loan institution that may be agreed upon in writing between the employee and such person, firm or corporation, which agreement shall specifically identify the employee, the financial institution, the type of account and the account number: *Provided*, That nothing herein contained shall be construed in a manner to require any person, firm or corporation to pay employees by depositing funds in a financial institution.

(c) If, at any time of payment, any employee shall be absent from his or her regular place of labor and shall not receive his or her wages through a duly authorized representative, he or she shall be entitled to payment at any time thereafter upon demand upon the proper paymaster at the place where his or her wages are usually paid and where the next pay is due.

(d) Nothing herein contained shall affect the right of an employee to assign part of his or her claim against his or her employer except as in subsection (e) of this section.

(e) No assignment of or order for future wages shall be valid for a period exceeding one year from the date of the assignment or order. An assignment or order shall be acknowledged by the party making the same before a notary public or other officer authorized to take acknowledgments, and any order or assignment shall specify thereon the total amount due and collectible by virtue of the same and three

fourths of the periodical earnings or wages of the assignor shall at all times be exempt from such assignment or order and no assignment or order shall be valid which does not so state upon its face: *Provided*, That no such order or assignment shall be valid unless the written acceptance of the employer of the assignor to the making thereof, is endorsed thereon: *Provided, however*, That nothing herein contained shall be construed as affecting the right of employer and employees to agree between themselves as to deductions to be made from the payroll of employees.

The WV Division of Labor website at the link below contains information that confirms WVDE's interpretation: http://www.wvlabor.com/newwebsite/Documents/wageforms/Direct_Deposit.pdf

The Office of School Finance is often asked how the State of WV could require that all state employees utilize either direct deposit or the payroll debit cards. The State of WV was granted the authority to require this under a separate section of WV Code. See the highlights below:

§12-3A-1. Legislative purpose and findings.

The Legislature finds that state government should facilitate and promote electronic commerce, particularly in the electronic receipting and disbursing of state funds. As many individuals receiving recurring state funds do not have bank accounts for the purpose of receiving direct deposits, and as the state desires that all payments be made electronically by the year two thousand two, it is the intent of the Legislature to provide a mechanism for all payees to receive payments by electronic funds transfers through direct deposit or through state issued debit cards. Further, as usage of electronic commerce grows, state spending units need the ability to accept payments electronically. To meet these goals, the Legislature seeks to ensure proper management oversight and accountability are maintained.

§12-3A-4. Payment by a West Virginia pay card.

The State Auditor and the State Treasurer may jointly establish a state stored value debit card program known as the "West Virginia Pay Card" for recipients of employee payroll, retirement benefits or entitlement programs who do not possess a federally insured depository institution account. The State Auditor and the State Treasurer shall use every reasonable effort to encourage all identified unbanked recipients to obtain a federally insured depository account. The State Auditor shall include an unbanked recipient in the program upon determining that good cause exists. Once an unbanked recipient is included in the program, the State Auditor shall provide the State Treasurer with an electronic file containing the necessary unbanked recipient information. The State Treasurer shall issue a request for proposals in accordance with section three of this article to aid in the administration of the program. The State Auditor shall assist in the review of pay card proposals. In carrying out the purposes of this article, the State Treasurer shall not compete with banks or other federally insured financial institutions, or for profit.

§12-3-1b. Voluntary direct deposits by auditor of salaries of employees to banks or other financial institutions.

Any officer or employee of the state of West Virginia may authorize the direct deposit of his or her net wages to his or her account in any bank or other financial institution by electronic funds transfer. Direct deposit authorizations shall comply with the requirements of section one-a of this article. Upon approval of an authorization, the auditor shall issue the warrant in the manner specified on the authorization and forward the warrant to the treasurer for further disposition to the designated bank or other financial institution on or before the day or days the officer or employee is due his or her net wages. Direct deposit authorizations may be revoked at any time thirty days prior to the date on which the direct deposit is regularly made and on a form to be provided by the auditor: *Provided, That on and after the first day of July, two thousand two, at the option of the auditor, all wages shall be deposited directly into the employees' account at any bank or financial institution designated by the employee via electronic funds*

transfer or, if the employee does not have a bank account, through the West Virginia check card program in accordance with section four, article three-a of this chapter.

Payment of Wages Upon Separation of Employment

Be reminded that WV Code regarding the payment of employee wages upon separation of employment was changed during the 2013 Legislative Session.

§21-5-4. Cash orders; employees separated from payroll before paydays.

(a) In lieu of lawful money of the United States, any person, firm or corporation may compensate employees for services by cash order which may include checks or money orders on banks convenient to the place of employment where suitable arrangements have been made for the cashing of the checks by employees for the full amount of wages.

(b) Whenever a person, firm or corporation discharges an employee, the person, firm or corporation shall pay the employee's wages in full no later than the next regular payday or four business days, whichever comes first. Payment shall be made through the regular pay channels or, if requested by the employee, by mail. For purposes of this section, "business day" means any day other than Saturday, Sunday or any legal holiday as set forth in section one, article two, chapter two of this code.

(c) Whenever an employee quits or resigns, the person, firm or corporation shall pay the employee's wages in full no later than the next regular payday. Payment shall be made through the regular pay channels or, if requested by the employee, by mail. However, if the employee gives at least one pay period's written notice of intention to quit, the person, firm or corporation shall pay all wages earned by the employee at the time of quitting.

(d) When work of any employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is laid off, the person, firm or corporation shall pay in full to the employee not later than the next regular payday, either through the regular pay channels or by mail if requested by the employee, wages earned at the time of suspension or layoff.

(e) If a person, firm or corporation fails to pay an employee wages as required under this section, the person, firm or corporation, in addition to the amount which was unpaid when due, is liable to the employee for three times that unpaid amount as liquidated damages. Every employee shall have a lien and all other rights and remedies for the protection and enforcement of his or her salary or wages, as he or she would have been entitled to had he or she rendered service therefor in the manner as last employed; except that, for the purpose of liquidated damages, the failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he or she is adjudicated bankrupt upon the petition.

Recording of Bonds with the County Clerk

The requirement for a faithful performance bond for the county treasurer is contained in WVC §18-9-6 (which establishes the maximum amount of the bond) and in State Board Policy 8100 (which establishes the minimum amount of the bond). State Board Policy 8100 is in the process of being revised by the Accounting Committee.

§18-9-6. Transfer of moneys; appointment of treasurer; bonding of treasurer; approval of bank accounts; authority to invest; security for funds invested.

The sheriff of each county shall remit to the board of education all moneys in his or her possession held on behalf of the county board of education, whether or not deposited in a bank or depository, unless the sheriff has been designated treasurer of the board of education as provided in this section. The transfer of funds shall be made as of the balances on hand on June 30 of the year in which the board of education appoints a treasurer other than the sheriff, and shall be completed no later than August 1 of that year. The transfer shall be adjudged complete and final upon the approval of the sheriff's official settlement for the fiscal year ending on June 30 of the year in which the board of education appoints a treasurer other than the sheriff, and any minor adjustment made necessary by the actually known figures shall also be made at that time. All balances in all county school funds at the end of each month after June 30 of the year in which the board of Education appoints a treasurer other than the sheriff shall be transferred by the sheriff to the county board of education not later than the tenth day of the following month.

On or before the first Monday in May each county board of education shall upon recommendation of the county superintendent appoint a treasurer for the board. The treasurer is the fiscal officer of the board, or an employee commonly designated as the person in charge of the financial affairs of the county board, or the county sheriff: Provided, That once a board of education has appointed a treasurer other than the sheriff, the sheriff may not be named treasurer of the board in a subsequent year. Upon appointment this person shall be titled and referred to as treasurer of the board of education. For the faithful performance of this duty, the treasurer shall execute a bond, to be approved by the board of education, in the penalty to be fixed by the board of education, not to exceed the amount of school funds which it is estimated the treasurer will handle within any period of two months. The premium on the bond shall be paid by the board of education.

The requirement to record the bond of the Superintendent, Treasurer, etc. with the clerk of the county court is contained in WVC §6-2-12.

6-2-12. Where certain bonds filed and recorded.

Every official bond given before, or approved by, the county court or the clerk thereof, and every bond executed in any proceeding before said court, including fiduciary bonds, and the bond of the clerk of the circuit court, shall be filed in the office of the clerk of the county court, and be recorded in a book kept by him for the purpose, and labeled "Record of Bonds." Every official bond given before, or approved by, the council or other similar body of any municipality, and every official bond given before, or approved by, any board of education of any magisterial district or independent district, shall be filed and preserved in the office of the recorder or clerk of such municipality, or in the office of the clerk or secretary of such board of education, as the case may be, and be recorded in the records of such council or other similar body of the municipality, or of such board of education, respectively, and a certified copy of every such bond shall, by such recorder, clerk or secretary, be forthwith made and filed in the office of the clerk of the county court of the county of such municipality or board of education, and said last-mentioned clerk shall record such copy in the book to be kept by him as aforesaid. Every bond given before, or approved by, the circuit court, or the judge thereof in vacation, or the clerk of such court, and every bond filed in any civil suit or proceeding in any circuit court, and the bond of the clerk of the county court, shall be filed in the office of the clerk of the circuit court, and be recorded in a book kept by him for the purpose, and

labeled "Record of Bonds." Any bond required of the clerk of any criminal, intermediate or other inferior court, shall be filed in the office of the clerk of the county court, and be recorded as other bonds in said office, and every bond taken in any proceeding in such criminal, intermediate or inferior court, shall be filed and recorded in the office of the clerk of such criminal, intermediate or inferior court: Provided, however, That where the bond of the clerk of any court is herein required to be filed and recorded in the office of the clerk of some other court, the clerk of the court in whose office such bond is filed shall make and deliver to the clerk filing the same a certified copy of the bond so filed, which certified copy shall be filed and recorded in the office of the clerk giving such bond.

Purchase Orders/Contracts

State Board Policy 8200 defines a purchase order as follows:

- **Purchase Order** – A written or electronic document issued by the LEA to a vendor authorizing or executing a purchase transaction.

It is the opinion of the WVDE Office of School Finance that a purchase order can serve as a contract if certain criteria are met (see below). A contract is defined in State Board Policy 8200 as follows:

- **Contract** – A written, legally binding agreement between two (2) or more parties in which is specified the terms and conditions to which the parties have agreed.

All contracts (including purchase orders intended to serve as contracts) must contain the following:

- A reference to the RFP/RFQ
- A reference to the successful vendor's bid documents
- The signature of an authorized representative of both the LEA and the successful vendor. Please note that the authorized representative must have the authority to legally bind the organization to the contract.
- Basic contract terms and conditions. If the vendor has provided an agreement with terms and conditions, the agreement addendum from Appendix C of State Board Policy 8200 must be attached.
- No debt affidavit indicating that the vendor does not owe any debt to the State in excess of \$1,000.
- Any required bonds (ex: performance and payment bonds for construction contracts in excess of \$25,000)

Communication with County Sheriff for Tax Tickets

Based on a recent experience of a county, the Office of School Finance would like to stress the importance of communicating with the County Sheriff's office regarding changes in your levy. If you have a new bond, excess or permanent improvement levy, it is recommended that you communicate that fact with the County Sheriff to ensure the tax tickets are printed properly. The same recommendation would apply if a particular levy ends due to the failure of an excess levy, the final year of a bond levy, etc.

WVEIS Server Upgrade

As you are aware the WVEIS server upgrade previously scheduled for Friday, June 20, 2014 has been rescheduled to Friday, July 11, 2014. This postponement was made after careful consideration of potential impact on payroll processing. System modifications that were made in support of the server upgrade were negatively impacting the ability of finance personnel to accomplish payroll processes.

Friday, July 11, 2014 is a firm date for these rescheduled upgrade activities. If any difficulties are encountered it may result in an outage through Sunday, July 13, 2014 to remedy or restore existing data systems. The system will be available until 5:00 p.m. EST to allow standard processing through normal business hours. At 5:00 p.m. EST on July 11, 2014 the system will be taken off line to begin final upgrade activities. Please plan accordingly as the date of July 11, 2014 will not be modified.

Upon completion of the upgrade, the data systems will be available 7 days a week/24 hours a day. This will create a larger window of available processing time for batch and interactive jobs as the data systems have previously been unavailable nightly for four hours to allow tape backup activities. This server upgrade will also incorporate significant hardware upgrades such as solid state drives and newer architecture that will enhance system response times. This will also allow for a faster change over should the primary server go down since the back-up is now a replicated server. There will now be no data loss from moving to back-up tapes from the previous evening.

Please contact Randall Kirk at 304.558.8869 if you should have any questions or concerns.

Compensation for Teachers who Participate in the Hiring Process

Teachers who participate on interview committees on their own time are entitled to compensation and the amount of compensation to be paid is based on their regular daily rate of pay. See Section 7.3 of State Board Policy 5000, which states the following:

“7.3. Classroom teachers who directly participate in making recommendations for filling classroom teaching positions pursuant to the options set forth in this policy for periods beyond his

or her individual contract shall be compensated based on his or her daily rate of pay, prorated to an hourly rate. The principal shall require that the participating teachers keep time sheets documenting the actual time spent on the recommendation process and shall verify that the time sheets are accurate before submitting them for payment. In no event shall a teacher be entitled to payment for more than two hours per position. However, if there are more than four qualified applicants for a single classroom teacher position who are selected for an interview by the hiring committee chair or single designee, the faculty senate members participating in the interviews may be compensated for an additional hour for actual time spent on the interview process for that position.”

Potential Change to Budget Submission Deadline for FY 2016

The Office of School Finance is considering a change in the due date of the fiscal year 2016 proposed budget from May 30th (the current deadline and last possible submission date allowed under WV Code) to May 15th. The earlier submission date would allow the limited staff of the Office of School Finance additional time to review the proposed budgets and review any changes submitted by the LEAs in response to budget comments/questions. The current due date has resulted in a very short turnaround timeframe to finalize and approve all of the proposed budgets. There is no margin of error for technical issues or delayed responses from LEAs to budget comments/questions. If the official WVDE approval is not granted by June 30th, an LEA would not be able to legally operate effective July 1st. Any expenditure incurred would be considered unauthorized.

A final determination on this issue will be made by December 2014 and communicated at the Winter WVEIS Conference.