



**DAVE YOST**  
Ohio Auditor of State



2018 LGOC  
**Township  
LEGAL UPDATE**

Presented by:  
**Kristen Martin**  
Deputy Chief Legal Counsel



**DAVE YOST**  
Ohio Auditor of State

[www.ohioauditor.gov](http://www.ohioauditor.gov)

1

---

---

---

---

---

---

---

---

---

---

---

---

**AGENDA**

- Legislative Update
- Case Law Update
- Recent AOS Bulletin
- Ethics Opinions
- Force Accounts
- Health Insurance Reimbursement Update



**DAVE YOST**  
Ohio Auditor of State

[www.ohioauditor.gov](http://www.ohioauditor.gov)

2

---

---

---

---

---

---

---

---

---



---

---

---

**Public Records Act**  
Quick Overview

- Public Records Act = ORC 149.43
- General Obligations
  - Adopt public records policy
  - Promptly prepare records and make available for inspection
  - Make copies within a reasonable time
  - Follow an approved records retention schedule

**DAVE YOST**  
Ohio Auditor of State

[www.ohioauditor.gov](http://www.ohioauditor.gov)

3

---

---

---

---

---

---

---

---

---

---

---

---

# Public Records Act

## Quick Overview

A "record" is:

1. Any document, device, or item, regardless of physical form or characteristic, including electronic records,
2. Created or received by or coming under the jurisdiction of any public office
3. Which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.



DAVE YOST  
Ohio Auditor of State

www.ohioauditor.gov

4

---

---

---

---

---

---

---

---



## PUBLIC RECORDS MAINTAINED ON A WEBSITE

- If a public office has some or all of its public records on a website, fully accessible to and free to the public at all times, then the public office may limit the number or records requested in digital format by a single person to ten per month.
- Limitation on number of requests does not apply if:
  - Requested records are not available on the website, or
  - Requester certifies, in writing, that he does not intend to use the information requested for commercial purposes.

ORC 149.43(B)(7)(c)(ii)



DAVE YOST  
Ohio Auditor of State

www.ohioauditor.gov

5

---

---

---

---

---

---

---

---

# Public Records Act

## Time to Respond



- After receiving a request for public records, a public office or person responsible for public records is required to make copies "within a reasonable period of time."
  - There is no specific deadline by which a public office must respond
  - "Reasonable period of time" depends on the pertinent facts and circumstances of each request
    - ❖ Includes time to retrieve, review, redact, and obtain legal advice (when necessary)



DAVE YOST  
Ohio Auditor of State

www.ohioauditor.gov

6

---

---

---

---

---

---

---

---

# Public Records Act

## Case Law Update

### Time to Respond

*State ex rel. Cincinnati Enquirer v. Deters*, 148 Ohio St.3d 595 (2016)

- Facts
  - On July 19<sup>th</sup>, a police officer with the University of Cincinnati Police Department shot and killed Samuel DuBose during a traffic stop
    - The events of leading up to and immediately following the shooting were recorded on the officer's body camera.
- Timeline
  - July 20 - Media made a request to the county prosecutor's office to obtain a copy of the body cam video
  - July 21 - the prosecutor's office received the video
  - July 27 - mandamus action was filed
  - July 29 - body camera video was provided



**DAVE YOST**  
Ohio Auditor of State

[www.ohioauditor.gov](http://www.ohioauditor.gov)

7

---

---

---

---

---

---

---

---

---

---

# Public Records Act

## Case Law Update

Did the prosecutor provide the records promptly?



- The prosecutor was entitled to review the video to determine if any redaction was necessary
- The prosecutor produced the video six business days after it was received by his office

Court determined that the prosecutor responded in a reasonable period of time.



**DAVE YOST**  
Ohio Auditor of State

[www.ohioauditor.gov](http://www.ohioauditor.gov)

8

---

---

---

---

---

---

---

---

---

---

# Public Records Act

## Case Law Update

### Time to Respond

*State ex rel. Palitucci & Assoc., L.L.C. v. Cleveland*, 2017-Ohio-300

- Law firm sent a public records request to Cleveland for:
  - Policies, manuals, and regulations relating to police body cams and videos in the City's possession; policies regarding search warrants, a list of officers in the Gang Impact Unit, personnel files, training certifications, disciplinary reports, continuing education classes for nine specific police department employees and officers in the Gang Impact Unit.
- Review and production of records took the City about 3 months



**DAVE YOST**  
Ohio Auditor of State

[www.ohioauditor.gov](http://www.ohioauditor.gov)

9

---

---

---

---

---

---

---

---

---

---

# Public Records Act

## Case Law Update

- Prior to production of records, the law firm filed a mandamus action
- Law firm's argument
  - City did not respond within a reasonable time because:
    - Records were not produced until three months later and after the mandamus action was filed
    - The City did not respond to several of the Law Firm's requests for status updates
- City's argument
  - Responded within a reasonable time based on the voluminous nature of the request



DAVE YOST  
Ohio Auditor of State

www.ohioauditor.gov

10

---

---

---

---

---

---

---

---

---

---

# Public Records Act

## Case Law Update



- Eighth District Court of Appeals determined:
  - The request included a large amount of information that needed reviewed and redacted
  - The City advised the requester that records would be compiled and produced after review
- Based on the size and nature of the request, the court held that the City provided records within a reasonable period of time.



DAVE YOST  
Ohio Auditor of State

www.ohioauditor.gov

11

---

---

---

---

---

---

---

---

---

---

# Can Public Business Be Discussed Via Email?

*White v. King*, 147 Ohio St.3d 74 (2016)

The Open Meetings Act "prohibits any private prearranged discussion of public business by a majority of the members of a public body regardless of whether the discussion occurs face to face, telephonically, by video conference, or electronically by email, text, tweet, or other form of communication."



DAVE YOST  
Ohio Auditor of State

www.ohioauditor.gov

12

---

---

---

---

---

---

---

---

---

---

## Tourism Development District ORC 503.56

- Increases maximum acreage for such a district from 200 to 600 acres
- Extends timeframe for adopting such a district from 2018 to 2020



DAVE YOST  
Ohio Auditor of State

[www.ohioauditor.gov](http://www.ohioauditor.gov)

13

---

---

---

---

---

---

---

---

## Commercial Advertising on Township Website ORC 503.70

- Trustees may authorize, by resolution, the use of commercial advertising on township's web site.
- Must comply with state and federal law, including ORC 9.03, and federal regulations on the use of commercial advertising on a .gov domain.



DAVE YOST  
Ohio Auditor of State

[www.ohioauditor.gov](http://www.ohioauditor.gov)

14

---

---

---

---

---

---

---

---

## Cybersecurity Training for Fiscal Officers ORC 507.12

- Cybersecurity included as a topic for mandatory continuing education for township fiscal officers.



DAVE YOST  
Ohio Auditor of State

[www.ohioauditor.gov](http://www.ohioauditor.gov)

15

---

---

---

---

---

---

---

---

# Transfer Approval

ORC 5705.16

- Removes requirement to petition Court of Common Pleas for approval before transferring revenue between certain funds.
- Maintains requirement to receive approval of the Tax Commissioner upon finding that transfer is justified or necessary and that no injury will result.



DAVE YOST  
Ohio Auditor of State

www.ohioauditor.gov

16

---

---

---

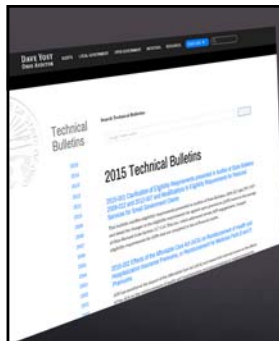
---

---

---

---

---



# AUDITOR OF STATE BULLETIN



DAVE YOST  
Ohio Auditor of State

www.ohioauditor.gov

17

---

---

---

---

---

---

---

---



# CREDIT CARD CASH WITHDRAWALS

*Bulletin 2016-004*

- Public transactions in cash are strongly disfavored
- Few reasons exist for a public entity to use cash
- Rebuttable presumption that cash withdrawals are not for a public purpose
- Public entities should develop, maintain, and strictly apply appropriate authorization and tracking controls incident to credit card usage, particular emphasis on cash withdrawals



DAVE YOST  
Ohio Auditor of State

www.ohioauditor.gov

18

---

---

---

---

---

---

---

---

# OHIO ETHICS COMMISSION OPINIONS




**DAVE YOST**  
Ohio Auditor of State

[www.ohioauditor.gov](http://www.ohioauditor.gov)

19

---

---

---

---

---

---

---

---

---

---

# OHIO ETHICS COMMISSION *OPINION #2016-001*



## Restrictions on Public Officials Employed by Entities that Receive Public Financial Assistance

- Can a council member of a municipality that provides financial support to a nonprofit corporation be employed as the corporation's director?
  - R.C. 2921.42(A)(3) prohibits a public official from also being employed by a nonprofit or for profit corporation, company, or other entity, where:
    - the establishment or operations of the entity is dependent upon receipt of the public agency's financial assistance, OR
    - the public official would otherwise profit from the award of the contract.



**DAVE YOST**  
Ohio Auditor of State

[www.ohioauditor.gov](http://www.ohioauditor.gov)

20

---

---

---

---

---

---

---

---

---

---

# FORCE ACCOUNTS



**DAVE YOST**  
Ohio Auditor of State

[www.ohioauditor.gov](http://www.ohioauditor.gov)

21

---

---

---

---

---

---

---

---

---

---

## Force Account

Occurs when a road, street, bridge, or culvert project is undertaken by a public entity using its own labor, materials, and equipment.

- o Public entity acts as contractor.
- o Labor employed by public entity.
- o Equipment owned, purchased or leased.



DAVE YOST  
Ohio Auditor of State

www.ohioauditor.gov

22

---

---

---

---

---

---

---

---

---

---

## Force Account Overview

- AOS Bulletin 2008-004
  - Materials and equipment from outside vendors
    - Okay
    - Competitive Bidding
    - Cost Included
  - Outside contractors—cost included



DAVE YOST  
Ohio Auditor of State

www.ohioauditor.gov

23

---

---

---

---

---

---

---

---

---

---

## Examples—Not Force Account

- Cleaning a culvert ditch.
- Placing, installing, or repairing signs.
- Installation and maintenance of guardrail.
- Clearing brush and debris.
- Mowing grass along roadway.
- Snow removal.



DAVE YOST  
Ohio Auditor of State

www.ohioauditor.gov

24

---

---

---

---

---

---

---

---

---

---



# Township Insurance

## ▪ TOWNSHIP INSURANCE FOR OFFICERS/EMPLOYEES

Ohio Revised Code Section 505.60 (Insuring Townships)

- ❖ Hospitalization
- ❖ Surgical care
- ❖ Major medical care
- ❖ Disability
- ❖ Dental care
- ❖ Hearing aids
- ❖ Prescription
- ❖ Sickness



**DAVE YOST**  
Ohio Auditor of State

[www.ohioauditor.gov](http://www.ohioauditor.gov)

25

---

---

---

---

---

---

---

---

---

---

# Township Insurance, cont. Ohio Rev. Code Section 505.60

- May purchase long-term care insurance contracts as provided in Rev. Code § 124.841
- Covering employees/officers and immediate dependents
  - ❖ Uniform coverage for full-time employees
  - ❖ *May* cover part-time employees
    - Any officer or employee may refuse
- May contribute to a bargaining unit health and welfare trust fund or
- Self-insurance or joint self-insurance as provided in Rev. Code § 9.833



**DAVE YOST**  
Ohio Auditor of State

[www.ohioauditor.gov](http://www.ohioauditor.gov)

26

---

---

---

---

---

---

---

---

---

---

# Group Life Insurance Rev. Code Section 505.602



- Group Life Insurance for Officers & Employees:
  - ❖ All or any part of premiums paid by Township
  - ❖ May participate in a joint arrangement with other political subdivisions (OAG 2003-026)
  - ❖ Lives of officers and employees
  - ❖ Not to exceed \$50,000 per individual



**DAVE YOST**  
Ohio Auditor of State

[www.ohioauditor.gov](http://www.ohioauditor.gov)

27

---

---

---

---

---

---

---

---

---

---

# Premium Reimbursement

## Rev. Code Section 505.601

### NON-INSURING TOWNSHIP

- ❖ Reimburse for out-of-pocket premiums
  - Officers/employees and immediate dependents
- ❖ Township must first adopt a resolution stating:
  - It has chosen not to procure coverage (Any type identified in 505.60)
  - It will provide a uniform monthly or yearly payment amount to cover employees and their immediate dependents



DAVE YOST  
Ohio Auditor of State

[www.ohioauditor.gov](http://www.ohioauditor.gov)

28

---

---

---

---

---

---

---

---

---

---

# Affordable Care Act

- Federal Patient Protection and Affordable Care Act (ACA)
- IRS Notice 2015-17
  - Employer premium reimbursement = Group health plan
    - ❖ Not permissible if limits amounts
    - ❖ Must be "integrated" with health care plan
    - ❖ Subject to fine of \$100 per day per employee (maximum \$36,500 per year per employee)
    - ❖ Grace period until June 30, 2015
      - ✓ Subject to fine thereafter



DAVE YOST  
Ohio Auditor of State

[www.ohioauditor.gov](http://www.ohioauditor.gov)

29

---

---

---

---

---

---

---

---

---

---

# 21<sup>st</sup> Century Cures Act

- FEDERAL 21<sup>ST</sup> CENTURY CARES ACT
  - XVIII USC Section 18001-Effective January 1, 2017
    - Qualified small employer health reimbursement arrangement where employer does not offer group health
      - ❖ Funded solely by employer
      - ❖ Proof of coverage provided by employee
      - ❖ Annual payments-Subject to annual COL adjustments
        - \$4,950 per individual
        - \$10,000 per family
        - No variation except on basis of age
        - Fewer than 50 employees
    - Annual notice to employees required-90 days before



DAVE YOST  
Ohio Auditor of State

[www.ohioauditor.gov](http://www.ohioauditor.gov)

30

---

---

---

---

---

---

---

---

---

---

# AOS Technical Bulletin 2017-002

## Premium Reimbursement Overview

- Qualified Small Employer Health Reimbursement Arrangement
- Fewer than 50 full-time or full-time equivalent employees
- Does not offer a group health plan to ANY employee
- Provided uniformly to all eligible employees
- Funded solely by the eligible employer
- No salary reduction contributions are made under the reimbursement plan
- Payments and reimbursements for any year do not exceed \$4,950.00 per employee or \$10,000 for family



DAVE YOST  
Ohio Auditor of State

www.ohioauditor.gov

31

---

---

---

---

---

---

---

---

---

---

# 2017 OAG 026

- Ohio Constitution, Article II, Section 20
  - ❖ Prohibits in-term change of officer's compensation
- OAG Opinion Request (2017 OAG 006)
  - ❖ Ashlabula Prosecuting Attorney
- Article II, Section 20
  - ❖ Townships that suspended insurance reimbursements because of ACA but have resumed cash payments or reimbursements do not violate prohibition against in-term changes in public officer's compensation
    - Boards must adopt a new resolution authorizing resumption of payments and reimbursements if resolution was adopted to discontinue because of ACA
    - Boards should adopt a new resolution authorizing resumption if no resolution was adopted to discontinue because of ACA



DAVE YOST  
Ohio Auditor of State

www.ohioauditor.gov

32

---

---

---

---

---

---

---

---

---

---

# 2018 OAG 001



- 505.60(D) reimbursements must comply with federal dollar limits
- Must be integrated with another group health plan in accordance with federal law.



DAVE YOST  
Ohio Auditor of State

www.ohioauditor.gov

33

---

---

---

---

---

---

---

---

---

---

## 2016 OAG 008

- Ohio Constitution, Article II, Section 20
  - ❖ Prohibits in-term change of officer's compensation
- Term-period for which person elected or appointed
- Appointed to vacancy
  - ❖ Death, resignation, or retirement of another
    - New term
  - ❖ Own resignation or retirement
    - Not a new term



**DAVE YOST**  
Ohio Auditor of State

[www.ohioauditor.gov](http://www.ohioauditor.gov)

34

---

---

---

---

---

---

---

---

---

---

## Legal Division

88 East Broad Street, 9<sup>th</sup> Floor  
Columbus, Ohio 43215

Presenter Phone:

(614) 752-8683 / (800) 282-0370

Presenter Fax: (614) 466-4490

Email:

[legaldivision@ohioauditor.gov](mailto:legaldivision@ohioauditor.gov) /  
[contactus@ohioauditor.gov](mailto:contactus@ohioauditor.gov)



**DAVE YOST**  
Ohio Auditor of State

[www.ohioauditor.gov](http://www.ohioauditor.gov)

35

---

---

---

---

---

---

---

---

---

---



**Ohio Auditor of State**  
**Dave Yost**

88 E. Broad St.

Columbus, Ohio 43215

Phone: (800) 282-0370 Fax: (614) 466-4490

Email: [ContactUs@OhioAuditor.gov](mailto:ContactUs@OhioAuditor.gov)

[www.OhioAuditor.gov](http://www.OhioAuditor.gov)

36

---

---

---

---

---

---

---

---

---

---