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**Local Government Official's
Conference
2014**

***Legal Update For
Townships***

Presented by:
Auditor of State
Legal Division

What's on the Agenda?

- Trustee and Fiscal Officer Compensation
- Recent AOS Bulletins
- Legislative Update
- Recent Attorney General Opinions
- Public Records Act Overview



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**TRUSTEE AND FISCAL
OFFICER COMPENSATION**



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Trustee and Fiscal Officer Compensation

RC 505.24 (C)



ORC § 505.24 requires that a township trustee paid on a salary basis **shall certify** the percentage of time spent working on matters to be paid from the township general fund and from other funds in such proportions as the kinds of services performed.


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Trustee and Fiscal Officer Compensation

What does “certify” mean?

- Certification must be done prior to receiving each pay (each pay period)
- Certification must be individual (not done as group)
- Certification does not have to be a time log, but can be a statement indicating percentage of time spent on different fund activities
- See AOS Bulletin 2011-007


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Application Of The Certification Requirement

The certification requirement only applies to trustees and fiscal officers. Documentation is still required where a township compensates other township employees from funds other than the general fund.




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Trustee and Fiscal Officer Compensation

- **Certification must be for completed work**
- **Sample Certification Form**
 - Trustees can use the sample form provided in AOS Bulletin 2011, or develop their own form, as long as the information certified illustrates the percentage of time spent that relates to the time worked.



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Trustee and Fiscal Officer Compensation

- **Resources for review:**

- ORC § 505.24(C);
- AOS Bulletin 2011-007 and;
- Ohio Compliance Supplement § 6-9



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RECENT AUDITOR OF STATE BULLETINS



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AOS Bulletin No. 2012-003

HB 66 / ORC 117.103

House Bill 66 made changes to the AOS fraud hotline and requires public employers to notify their employees of the hotline. This Bulletin explains those changes and also provides a model form that public employers can use to satisfy the requirements of House Bill 66.



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Best Practices For Responding To Public Records Requests

AOS Bulletin 2011-006

- Ohio law requires that a public office make public records available for inspection or copying, depending on the request. The time required for a response depends on the type of request.
 - If a request is to inspect public records-response must be prompt.
 - If copies are requested-those copies must be provided within a reasonable period of time.



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AOS Bulletin 2011-006 (cont'd)

- When redacting information not subject to disclosure the public office is required to notify the requester of any redaction or make the redaction plainly visible.
- Where a public record request is denied, the public office must provide the requester with a reason, including the legal authority for the denial/redaction.
- Penalties
- Best Practices
 - Public Records Log
 - Copies of public records requests



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LEGISLATIVE UPDATE




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Health Insurance Reimbursements For Immediate Dependents

Health Insurance

- On September 7, 2012, the Ohio Attorney General issued Opinion No. 2012-027 regarding the issue of township health insurance reimbursements.
- *The AG opined that ORC 505.60(D) does not authorize a board of township trustees to reimburse a township officer or employee for out-of-pocket premiums attributable to health care insurance coverage for the officer or employee's immediate dependents that the officer or employee obtains other than from the township.*
- On December 20, 2012 HB 347 was adopted into law, amending ORC 505.60 (D) to include "*and their immediate dependents.*"


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Fiscal Distress Financial Plan Requirements

HB 509 / ORC 118.023

- Effective September 28, 2012
- Requires a county, township, municipal corporation or school district under a fiscal watch or emergency to evaluate the feasibility of entering into shared service agreements with other political subdivisions if so authorized by statute


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Township Law Applies After Dissolution Of Village

HB 509 / ORC 703.21 (Eff. 9/28/12)

- After dissolution of a village, all resolutions of the township or townships into which the village's territory is dissolved apply throughout the townships newly included territory.



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Township Merger

HB 153 (Eff. 9/29/11)

- ORC 523.01 to 523.07 provide a method where one or more townships may merge with a contiguous township to create a new township.
- Can be accomplished by:
 - Initiative petition of the voters of the townships to be merged, or
 - Submission of merger to voters of the townships to be merged



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Health and Wellness Benefits

HB 225 / ORC Section 505.603 (Eff. 3/22/2012)

- ORC 505.60, .601, and .602 allow townships to offer health and wellness benefit programs to their officers, employees and dependents.
- Health and wellness benefit programs provide incentives to encourage township officials and employees to maintain a healthy lifestyle.



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Payroll Deduction For Insurance, Coverage, Or Benefits

HB 225 / ORC Section 505.603 (Eff. 3/22/2012)

The township fiscal officer may deduct from an employee's salary or wages the amount authorized to be paid by the employee for one or more qualified benefits available under a cafeteria plan and existing benefits, if:

- (1) the employee authorizes the township fiscal officer, in writing, to deduct that amount from the employee's salary or wages;
- (2) the benefit is offered to the employee on a group basis, and;
- (3) at least 10% of the township employees voluntarily elect to participate in the receipt of that benefit. Further, the township fiscal officer may issue warrants for amounts deducted to pay program administrators or other insurers for the benefits.



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RECENT OHIO ATTORNEY GENERAL OPINIONS



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AG Opinion No. 2013-022

- A board of township trustees may reimburse a township officer or employee pursuant to R.C. 505.601 for monthly Medicare Parts A, B, and D premium payments.
- The benefits provided consistent with the benefits identified in the township resolution stating that the township has chosen not to procure a health care plan under R.C. 505.60 and the reimbursement does not exceed the uniform monthly or yearly payment amount set by that resolution.



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AG Opinion No. 2013-026

- A township is not required to seek reimbursement for its employee contributions made by the township to the Ohio Police and Fire Pension Fund after the township failed to deduct those contributions from the employee's wages.
- A township may, however, choose to seek reimbursement from employees for those contributions



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AG Opinion No. 2013-036



A township may not use tax revenue derived from a levy under ORC 5705.19(I) to purchase a motor vehicle that is equipped to remove snow and ice from roads.



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AG Opinion No. 2012-024

- A mid-term change in the amount of money expended by a township on a township officer's health insurance coverage is not prohibited by Ohio Const. Art. II § 20, so long as such change is not due to a mid-term legislative change to the formula for calculating the officer's compensation.
- Article II Section 20 of the Ohio Constitution does not prohibit a township officer who receives health insurance benefits at the commencement of his term of office from electing to discontinue receipt of those benefits mid-term.



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PUBLIC RECORDS/OPEN MEETINGS ACT OVERVIEW



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Definitions – The “Who?” of Public Records

- **Public Office** – R.C. 149.011(A)
- **A person responsible for public records**
- Any private entity that is the **functional equivalent** of a governmental entity



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Definitions – The “Who?” of Public Records

Factors considered in “Functional Equivalence”:

- Whether the entity performs a **governmental function**
- Level of **government funding**
- Extent of **government involvement or regulation**
- Whether the entity was **created by the government or to avoid the requirements of the Public Records Act**

State ex rel. Oriana House, Inc. v. Montgomery (2006), 110 Ohio St. 3d 456.



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Definitions – The “What?” of Public Records

Records – R.C. 149.011(G):

- Have information stored on fixed media (paper, tapes, electronic text, photos, films, videos, etc.), **and**
- Are created or received by, or come under the jurisdiction of, a public office, **and**
- Document what the public office does: the organization, functions, policies, decisions, procedures, operations, or other activities **of the office**



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Definitions – The “When” of Public Records

Public Records – R.C. 149.43(A) includes records “kept by” any public office

“**Kept by**” means any record that is actually in existence and in the possession of the public office or person responsible for public records

- Examples of records **not “kept by”** a public office:
 - (1) a record not yet in existence,
 - (2) a record that has been disposed of lawfully



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Rights and Obligations

- **Any “person”** can make a public records request, including corporations and other governmental agencies
- **No special format** or **special language** is required
- A request may be **oral** or **written**
- The requester’s **motive is not relevant**. However, the request must at least be specific and describe in detail the records being sought
- A public office cannot require the requester to reveal his/her **identity**



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Rights and Obligations

- Promptly, or reasonable period of time
- Reasonable times during regular business hours
- Choice of copy media from normal office operations
- Copies at "cost"
- Payment in advance (optional)
- Methods of delivery



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Who is Subject to the Open Meetings Act and When? Definitions



Public Body:
Any decision-making body of the state, its political subdivisions, and school districts (**including any committee or sub-committee of each body**)

Meeting: (1) **Prearranged** gathering of
(2) a **majority** of members of public body
(3) conducting or discussing **public business**



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Looking Deeper: What is a Meeting?

Discussion/Deliberation vs. Information Gathering:

- Discussion and deliberation involve the weighing of reasons for/against a course of action and **must be conducted in open**
- Gatherings **solely** to receive factual information **may** not be meetings – **but consult legal counsel first!**

Work sessions:

- **Prearranged** work sessions, retreats, etc. where **public business is discussed** among a **majority of the members** of the public body are "meetings" and must be as noticed and open as any other meeting



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Obligations

Give appropriate **notice**
R.C. 121.22(F)

Take action & deliberate on public
business in **open** session
R.C. 121.22(C)

Take & file **minutes**
R.C. 121.22(C)



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Obligation 1: Notice (by rule)

Types of Meetings and the Notice Required

Regular Meetings → Meetings held at prescheduled intervals
Notice = time and place

Special Meeting → **Any meeting that is not a regular meeting**
Notice = at least 24 hrs advance notice of time, place, and purpose, **unless** it is:

***Emergency Meeting**, where notice must still be given immediately to news media who have so requested*



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Obligation 2: Openness

Take Action & Deliberate in Public

Where must public meetings be held?

- In a public forum within the area that the public body serves

Does the public have a right to speak at public meetings?

- Not required by the OMA, but may otherwise be permitted or required

Can members of the public record proceedings?

- Yes, if it does not disrupt the meeting



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Obligation 3: Minutes

“The minutes of a regular or special meeting of any public body shall be **promptly prepared, filed, and maintained and shall be open to the public.**”

- R.C. 121.22(C)
 - Minutes do not have to be a verbatim transcript of the proceedings but must be **full and accurate** and enable the public to understand the rationale behind the public body’s decisions.
 - There is no requirement to keep minutes of executive sessions.



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Executive Sessions

Proper Procedures:

- Must be preceded by specific motion, second, and roll call vote
- Motion should state the specific permissible topic(s) to be discussed
- Meetings must always begin & end in open session



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Executive Sessions

Acceptable Topics for Discussion:

- Personnel (**must** state specific type of personnel matter to be discussed, but **not** identity of the person)
- Certain property sale or purchase issues
- Court action (only with the body’s attorney)
- Collective bargaining preparation and sessions
- Matters required to be kept confidential by **codified** law
- Security arrangements
- Certain public hospitals’ trade secrets



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Executive Sessions

Present in Executive Sessions:

Who may members include?

- anyone who is invited to stay

Who may the members exclude?

- any other members of the public

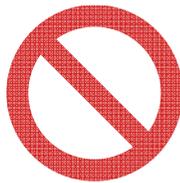


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Restrictions On Executive Session

- There can be **no decision-making**
- **No voting**, including “straw polls”
- Non-permitted matters may **not** be discussed in executive session, even if intertwined with permitted matters



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Executive Sessions - Records

- Executive sessions provide private space for discussion, but they do not **make** any materials confidential, including documents that are handed out
- Analyze public records issues separately, as though taking place outside of executive session
- No minutes need to be taken (and probably shouldn't be) of executive session discussions



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