



Dave Yost
Auditor of State



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**2014 Annual Local Government
Officials' Conference**

***VILLAGE OFFICERS'
LEGAL UPDATE***

Presented by:
Legal Division

What's on the Agenda?

- AOS Legal Division Overview
- AOS Bulletin Topics
- Legislative Update
- Ethics Reminders
- Proper Public Purpose Reminder
- Public Records/Open Meetings Act Overview



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**What Are the Responsibilities
of the Auditor's Legal Staff?**

- Provide the Auditor of State and field auditors with legal advice
- Prospectively help public offices comply with legal and audit requirements
- Provide continuing education to elected officials and government employees



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**Auditor Of State
Bulletin Topics**



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AOS Bulletin 2012-007



**Eligibility of Entities for Reduced
Auditor of State Audit Procedures**

A lower-cost audit process is implemented for smaller entities that have limited transactions and/or risk. This bulletin explains which entities and audits qualify for new options.



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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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AOS Bulletin No. 2011-008



- ORC 9.833 now requires all self-insurance programs must:
 - Prepare and maintain a certified audited financial statement and a report of amounts reserved for the program and disbursements made from such funds
 - Provide such report to the AOS
 - Include a contract with a CPA and member of the American Academy of Actuaries

For entities that already receive a Chapter 117 audit either by AOS or an IPA contracted through AOS and maintain a self-insurance program, the above requirements are satisfied and nothing more is required.

- For those entities that maintain a self-insurance program but, do not receive a Chapter 117 audit, (i.e., VEBA's) the above requirements will need to be complied with



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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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AOS Fraud-Reporting System

(H.B. 66 / ORC 117.103 / AOS Bulletin 2012-003)

- Effective May 4, 2012
- Requires the AOS to maintain a system for the reporting of fraud, including misuse of public money by any official or office.
- Any citizen can make anonymous complaint through our toll-free number, the AOS website, or through US Mail addressed to SIU.
- Reporting employee is protected against certain retaliatory or disciplinary action.



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AOS Fraud Reporting System

Requirements

- ✓ AOS must keep a log of all complaints
- ✓ all public employers must make all employees aware of fraud reporting system
- ✓ new hires must confirm in writing that they have received this information within 30 days after beginning employment



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Prohibited Use of Public Funds

(H.B. 326 / ORC 9.03)



- Effective September 5, 2012
- Prohibits any person from knowingly conducting any transaction of public funds to the benefit of any: campaign committee, political action committee, legislative campaign fund, political party, campaign fund, political committee, separate segregated fund or candidate.
- Adds a misdemeanor penalty for using public funds on campaign expenditures



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Fiscal Distress Financial Plan Requirements

(H.B. 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

(H.B. 509 / ORC 703.21 / Eff. 9/28/2012)

- 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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Shared Services

- Shared Service Agreements – ORC 9.482
- Effective September 29, 2011
- Authorizes political subdivisions to enter into agreements to perform services for one another
 - Can be any power/function/service that the political subdivision is otherwise authorized to exercise/perform/render
 - The legislative authorities of the contracting entities have to approve the contractual involvement
- Agreement cannot:
 - Levy a tax
 - Exercise any investment powers or perform any investment functions or render investment advice



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Shared Services (cont'd)

- No power, function, or service can be exercised within a political subdivision that is not a party to the agreement without first obtaining the written consent of the political subdivision that is not a party to the agreement.
- Tort liability law applies to political subdivisions that are parties to an agreement and to their employees when they are rendering a service outside the boundaries of their employing political subdivisions under an agreement.
- Employees acting outside of the subdivision boundaries can still participate in any pension/indemnity fund established by the political subdivision.
- Such employees are also entitled to all rights and benefits of Workers' Compensation Law.



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Competitive Bidding

Ohio Revised Code Section 731.14 Generally increases the competitive bidding threshold – from \$25,000 up to \$50,000.00

- All contracts over **\$50,000** shall be:
 - (a) In writing; and
 - (b) Awarded to the lowest and best bidder
- Keep in mind – charter villages can set up their own bidding requirements
- If your village has established a village administrator, consult ORC 731.14
- A village may reject any or all bids it receives
- All village contracts must be between the village and the bidder



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Merger of a Village

Ohio Revised Code Section 709.44:

New legislation allows for one or more villages, not necessarily adjacent to one another, to be merged with an adjacent unincorporated area of a township.

Can be accomplished by:

- Legislators adopting merger agreement (709.451)
- Submission of merger to voters of the villages to be merged (ORC 709.452)



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Ethics Reminders



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Ethics Reminders

OEC Advisory Op. No. 2010-03

Family Member Employment

- Public Officials cannot:
 - hire or use their positions to hire family members;
 - recommend or nominate family members for public jobs with any public agency;
 - give family members, or use their positions to secure for their family members, raises, promotions, job advancements, overtime pay or assignments, favorable performance evaluations, or any other things of value related to their employment.



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ETHICS UPDATE

OEC Advisory Op. No. 2010-03

Family Member Employment (cont'd)

- Two family members can work for the same public agency if both are able to comply with these restrictions.
- For these purposes, the term "public official" includes elected and appointed officials, as well as public employees.



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Proper Public Purpose

- Expenditures by a governmental unit should always serve a valid public purpose; this is found in AG Opinion No. 82-006.
- Your village council determines what constitutes a proper public purpose; as such, any decision must be memorialized by a duly enacted ordinance or resolution and may have *prospective* effect only.
- The Auditor of State's Office will only question expenditures where the legislative determination of a public purpose is arbitrary and incorrect.
- **Note:** Alcohol is never a proper public purpose, and we will issue findings for recovery accordingly.
- Remember, *prior, prospective* authorization of an expenditure by the appropriate legislative authority (e.g. village council) is the important concept to remember, as to avoid negative audit treatment.
- Please see Auditor of State Bulletins 2003-05 and 2004-002 for more information regarding proper public purpose issues.



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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

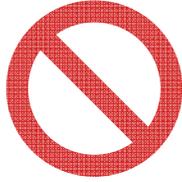


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Restrictions On Executive Session

- 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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